

# **SUPPLEMENTARY CONDITIONS - FTA**

## **FOREWORD**

- A. Further Supplementing the Authority's Standard Specifications, Section 00700 - General Conditions, the following Supplementary Conditions will apply.
- B. References to Article Numbers in the following Supplementary Conditions unless otherwise stated are to be the aforesaid Standard Specifications, Section 00700 - General Conditions. In case of conflict between these Supplementary Conditions and the aforesaid Standard Specifications, Section 00700 - General Conditions, these Supplementary Conditions will take precedence and shall govern.
- C. The Supplementary Conditions are included herein to augment the Standard Specifications, Section 00700 - General Conditions, with additional information which is applicable to this project.
- D. The enforcement of the requirements of any of the following Supplementary Conditions of the General Conditions shall not be construed as waiving any of the rights of the Authority contained in any of the other conditions of the Contract.

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# 1. MODIFICATIONS TO THE GENERAL CONDITIONS

## A. Article 3.2 - CERTIFICATION OF COMPLIANCE

### **CERTIFICATE OF COMPLIANCE** (Manufacturer of Fabricated Material)

Date\_\_\_\_\_20\_\_

WE HEREBY CERTIFY THAT \_\_\_\_\_  
(Description, or Kind of Material)

Furnished to \_\_\_\_\_  
(Name of Contractor Prime or Sub)

For Use on \_\_\_\_\_ Federal No. \_\_\_\_\_  
(Project No.)

In the Amount of \_\_\_\_\_  
(Quantity Represented)

Identify by \_\_\_\_\_  
(Label, Marking, Seal No., Consignment, or Waybill No.)

Shipped on\_\_\_\_\_20\_\_ Delivered on\_\_\_\_\_20\_\_

Shipped via \_\_\_\_\_  
(Method of Shipment, Car No., or Truck No.)

**MEETS THE REQUIREMENTS OF THE PERTINENT PROJECT PLANS, SUPPLEMENTARY CONDITIONS AND SPECIFICATIONS OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, IN ALL RESPECTS, PROCESSING, PRODUCT TESTING AND INSPECTION CONTROL OF RAW MATERIALS ARE IN CONFORMANCE WITH ALL APPLICABLE SPECIFICATIONS, DRAWINGS AND/OR STANDARDS OF ALL ARTICLES FURNISHED.**

All records and documents pertinent to this certificate and not submitted herewith will be maintained available by the undersigned for a period of not less than three years from date of final payment by the MBTA.

\_\_\_\_\_  
(Manufacturer of Supplier)

Signed by\_\_\_\_\_

Title\_\_\_\_\_NOTARY STAMP

Notarized Signature of Person  
having Legal Authority to bind the Supplier

### INSTRUCTIONS

1. The above is a suitable sample of an acceptable certificate.
2. Certificate is to be submitted in triplicate to the Engineer prior to, or on delivery of, material.
3. The following regulation is applicable to all projects involving Federal Funds.

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure) is applicable to this statement. (Section 1001 of Title 18, among other things, provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any Department or Agency of the

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United States shall be fined not more than \$10,000 or imprisoned not more than five years, or both).

B. **Article 6.1 - PROSECUTION OF WORK:** Insert a new subarticle A. 2. as follows: (add additional subarticles as necessary)

2.

<b>C. Milestone</b>	<b>No. of Calendar Days</b>	<b>Liquidated Damages</b>	<b>-</b>
Rate			
1. XXXX	XXX days after relocation of building tenants	\$XXXX/day	
2. Substantial Completion of work	XXX	\$XXXX/day	
3. Completion of Entire Work	XXX		
A.			

<b>Owner Caused Delay Damages</b>	
<b>Per Diem Rate</b>	\$XX per calendar day

D. **Article 7.1 - INSURANCE REQUIREMENTS:** Insert a new subarticle N. as follows:

N. **COVERAGE AND LIMITS TABLE- \* {Designer Notes: Tier level is based on contract amount. See tier table for limits and coverage amounts. Display only the tier and category applicable to the project. See Sample table of project with Tier 4.**

<b>TYPE OF INSURANCE</b>		<b>COVERAGE LIMITS</b>									
<b>CGL</b>		\$1M/\$2M									
<b>Auto</b>		\$1M									
<b>Umbrella</b>		\$25M									
<b>WC/EL</b>		Statutory/ \$1M Employer's Liability									
<b>Railroad Protective</b>		\$5M/10M (if applicable, if not N/A)									
<b>Air Craft</b>		\$5M (if applicable, if not N/A)									
<b>Water Craft</b>		\$5M(if applicable, if not N/A)									
<b>Pollution Liability</b>		\$10M									
<b>Builders Risk/ Property</b>		Contract Value									
<b>Tier</b>	<b>Contract Amount</b>	<b>CGL</b>	<b>Auto</b>	<b>Umbrella</b>	<b>WC/EL</b>	<b>Railroad Protective</b>	<b>Air Craft</b>	<b>Water Craft</b>	<b>Pollution Liability</b>	<b>Builders Risk/ Property</b>	<b>Cyber Liability</b>
						*	*	*			*
<b>1</b>	<b>&lt;\$1M</b>	\$1M/\$1M	\$1M	\$1M	Stat \$1M	\$5M/10M	\$5M	\$1M	\$1M	Contract Value	N/A
<b>2</b>	<b>\$1M-5M</b>	\$1M/\$2M	\$1M	\$5M	Stat \$1M	\$5M/10M	\$5M	\$1M	\$3M	Contract Value	\$1M
<b>3</b>	<b>\$5M - \$15M</b>	\$1M/\$2M	\$1M	\$10M	Stat \$1M	\$5M/10M	\$5M	\$5M	\$5M	Contract Value	\$1M
<b>4</b>	<b>\$15M- \$50m</b>	\$1M/\$2M	\$1M	\$25M	Stat \$1M	\$5M/10M	\$5M	\$5M	\$10M	Contract Value	\$1M
<b>5</b>	<b>\$50M - \$100M</b>	\$2M/\$4M	\$1M	\$50M	Stat \$1M	\$5M/10M	\$5M	\$5M	\$20M	Contract Value	\$1M

6	>\$100M	\$2M/\$4M	\$1M	\$100M	Stat \$1M	\$5M/10M	\$5M	\$5M	\$25M	Contract Value	\$1M
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**Tier Level Table (Below table is for reference only. To be deleted once Tier level has been set)**

E. **Article 8.7- DUTY TO LIMIT INTERFERENCE WITH OPERATIONS** - Insert additional Articles for any specific requirements related to operations impacts.

## 2. MINIMUM STATE WAGE RATES

- A. The minimum wage rates to be used for this Contract are shown on the schedules on the following pages. The rates shown on these schedules are the minimum to be paid during the life of the Contract. It is, therefore, the responsibility of bidders to inform themselves as to the local labor conditions such as the length of the work day and work week, overtime compensation, health and welfare contributions, labor supply and prospective changes or adjustment of rates. In the event of conflict between the schedules for any classifications, the greater amount for the classification shall prevail as the minimum wage rate.
- B. If the Contractor finds it necessary during the progress of the work to secure a minimum wage rate for some additional classification, he shall make a request for such additional classification to the Authority, who in turn will obtain the additional classification and corresponding minimum wage rate from the State Department of Labor and Industries and advise the Contractor of the same. These additional classifications and minimum wage rates are then to be considered a part of the Contract, and the Contractor shall have no claim for additional compensation because of the additional classification and minimum wage rates.
- C. Where a question arises as to the classification in the schedule of the Department of Labor and Industries in which any employee is to be included, the decision is to be made by the State Department of Labor and Industries, through their duly authorized representative.
- D. Within three days from the date of the first advertisement or call for bids, two or more employers of labor, or two or more members of a labor organization, or the awarding officer or official, or five or more residents of the town or towns where the public works are to be constructed, may appeal to the associate commissioners for a wage determination, or a classification of employment as made by the Commissioner, by serving on the Commissioner a written notice to that effect. Thereupon the Commissioner shall immediately cause the associate commissioners to hold a public hearing on the Commissioner's action appealed from. The associate commissioners shall render their decision not later than three (3) days after the closing of the hearing. The decision of a majority of the associate commissioners shall be final, and notice thereof shall be given forthwith to the awarding official or public body. (Section 27A, Chapter 149, General Laws, Commonwealth of Massachusetts).
- E. Payments by employers to health and welfare plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided, (Section 26, Chapter 149, General Laws, Commonwealth of Massachusetts).
- F. The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans as provided in the previous section, and such payments shall be considered as payments to persons under this section performing work as herein provided. Any employer engaged in the construction of such works who does not make payments to health and welfare plan where such payments are included in said rates of wages shall pay the amount of said payments directly to each employee engaged in said construction. (Section 27, Chapter 149, General Laws, as amended).

- G. The Contractor's attention is directed to further minimum wage provisions under Paragraph 3 of the Supplementary Conditions. In cases of conflict, the higher rate shall apply.



**3. U.S.A. DOT  
Federal  
Transit  
Administration  
Contract  
Requirements**

## **U.S.A. DOT Federal Transit Administration Contract Requirements**

- A. General
- B. Disadvantaged Business Enterprise
- C. Title VI of the Civil Rights Act of 1964
- D. Energy Conservation
- E. Cargo Preference
- F. Audit and Inspection
- G. Environmental, Resource Conservation, Energy Requirements, Seismic Safety, Clean Water and Recycled Products
- H. Notice of Federal Regulations
- I. Record Retention
- J. ADA
- K. Buy America Certification
- L. Fly America
- M. No Obligation by the Federal Government
- N. Program Fraud and False or Fraudulent Statements and Related Acts
- O. Termination
- P. Remedies/Breach of Contract
- Q. Integrity Certification
- R. Lobbying
- S. Nondiscrimination
- T. Liquidated Damages
- U. Labor Provisions
- V. Interests of Members of Congress
- W. Debarred Bidders
- X. Insurance / Bonding
- Y. Project Signs
- Z. Certified Payroll - Construction Projects
- AA. Disadvantaged Business Enterprise
- BB. DBE Obligation
- CC. Minimum Federal Wage Rates
- DD. Equal Employment Opportunity (EEO)  
  
Standard Federal Equal Employment Opportunity  
Construction Contract Specification
- EE. Veterans Employment  
  
Appx. No.1 - Notice of Requirement for Affirmative Action to Ensure  
Equal Employment Opportunity  
Appx No. 2 Supplemental Equal Employment Opportunity Anti  
Discrimination And Affirmative Action Program  
Appx No. 3 DBE Participation Provisions

## **A. GENERAL**

1. These Contract provisions shall apply to all Work performed on the Contract by the Contractor's own organization and with the assistance of workers under the Contractor's immediate superintendence and to all Work performed on the Contract by piecework, station work, or by Subcontract.
2. Except as otherwise provided for in each Section, the Contractor shall insert in each Subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier Subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with these Required Contract Provisions.
3. A breach of the following clauses of the Required Contract Provisions shall be sufficient grounds for termination of the Contract.

## **B. DISADVANTAGED BUSINESS ENTERPRISE**

THE (CONTRACTOR OR SUBCONTRACTOR AND ITS THIRD PARTY CONTRACTORS) SHALL NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, AGE, OR SEX IN THE PERFORMANCE OF THIS (CONTRACT OR AGREEMENT). THE REQUIREMENTS OF 49

C.F.R. PART 23 AND THE AUTHORITY'S U.S. DOT-APPROVED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM (WHERE REQUIRED) ARE INCORPORATED IN THIS (CONTRACT AGREEMENT) BY REFERENCE. FAILURE BY THE (CONTRACTOR OR SUBCONTRACTOR AND ITS THIRD PARTY CONTRACTORS) TO CARRY OUT THESE REQUIREMENTS IS A MATERIAL BREACH OF THE (CONTRACT OR AGREEMENT), WHICH MAY RESULT IN THE TERMINATION OF THIS (CONTRACT OR AGREEMENT) OR SUCH OTHER REMEDY AS THE AUTHORITY DEEMS APPROPRIATE.

**This section is in addition to and not a replacement of any other portion of the language of this Contract dealing with Disadvantaged Business Enterprises, Equal Opportunity, or Affirmative Action.**

1. **The Contractor shall provide information and reports requested by the Authority pertaining to its obligations under this Section, or other similar requirements of this Contract, and will permit access to Contract- related records, accounts and other relevant sources of information as necessary to determine the Engineer's compliance with the obligation hereunder.**
2. **The Contractor shall comply with all regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation and the Authority as they may be amended from time to time and which are hereby incorporated by reference and made a part of this Contract.**

**\*\*\* (THIRD PARTY CONTRACTING REFERS TO CONTRACTING BY AUTHORITY USING FEDERAL ASSISTANCE).**

## **C. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

The Contractor agrees to comply with, and assure the compliance by its subcontractors and third party contractors under this Project, with all requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; U.S. DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21.

#### **D. ENERGY CONSERVATION**

The Contractor, Subcontractors and its third party contractors shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with Energy Policy and Conservation Act, U.S.C. §§ 6321 et seq.

#### **E. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

As required by 46 C.F.R. PART 381, the Contractor agrees --

1. TO UTILIZE PRIVATELY OWNED UNITED STATES-FLAG COMMERCIAL VESSELS TO SHIP AT LEAST 50 PERCENT OF THE GROSS TONNAGE (COMPUTED SEPARATELY FOR DRY BULK CARRIERS, DRY CARGO LINERS, AND TANKERS) INVOLVED, WHENEVER SHIPPING ANY EQUIPMENT, MATERIALS, OR COMMODITIES PURSUANT TO THIS CONTRACT TO THE EXTENT SUCH VESSELS ARE AVAILABLE AT FAIR AND REASONABLE RATES FOR UNITED STATES-FLAG COMMERCIAL VESSELS.
2. TO FURNISH WITHIN 20 DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENTS ORIGINATING WITHIN THE UNITED STATES, OR WITHIN 30 WORKING DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENTS ORIGINATING OUTSIDE THE UNITED STATES, A LEGIBLE COPY OF A RATED, "ON-BOARD" COMMERCIAL OCEAN BILL-OF-LADING IN ENGLISH FOR EACH SHIPMENT OF CARGO DESCRIBED IN PARAGRAPH (1) ABOVE TO THE CONTRACTOR (THROUGH THE PRIME CONTRACTOR IN THE CASE OF SUBCONTRACTOR BILLS-OF-LADING) AND TO THE DIVISION OF NATIONAL CARGO, OFFICE OF MARKET DEVELOPMENT, MARITIME ADMINISTRATION, 400 SEVENTH STREET, S.W., WASHINGTON, D.C. 20590, MARKED WITH APPROPRIATE IDENTIFICATION OF THE PROJECT.
3. TO INSERT THE SUBSTANCE OF THE PROVISIONS OF THIS CLAUSE IN ALL SUBCONTRACTS ISSUED PURSUANT TO THIS CONTRACT.

#### **F. AUDIT AND INSPECTION**

Inspection by Federal Officials. The Contractor agrees to permit the Secretary of Transportation (Secretary) and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project. The Contractor agrees to require each third party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the

Project.

## **G. ENVIRONMENTAL, RESOURCE CONSERVATION, and ENERGY REQUIREMENTS**

The Authority recognizes that many Federal and State statutes imposing environmental, resource conservation, and energy requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. The Authority also recognizes that the Environmental Protection Agency (EPA), the Federal Highway Administration (FHWA) and other agencies of the Federal Government have issued and are expected in the future to issue requirements in the form of regulations, guidelines, standards, orders, or other directives that may affect the Project. Accordingly, the Authority agrees to adhere to, and impose on its contractors and subcontractors, any such Federal requirements, as the Federal Government may now or in the future promulgate. Listed below are requirements of particular concern to FTA. The Authority expressly understands that this list does not constitute the Authority's entire obligation to meet Federal requirements.

### **1. Environmental Protection**

The Contractor, Subcontractor and its third party contractors agree to comply with applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.; section 14 of the Federal Transit Act, as amended, 49 U. S.C. app. §§ 1610, Council on Environmental Quality regulations, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

### **2. Air Quality**

The Contractor, Subcontractors and its third party contractors agree to comply with applicable requirements of EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 21 U.S.C. of the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, the Contractor, Subcontractors and its third party contractors agree to implement each air quality mitigation and control measure incorporated in the Project. The Authority agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the Project set forth in the SIP.

EPA also imposes requirements pertaining to the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the Authority should be aware that the following EPA regulations,

among others, may apply to its Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, " 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use-Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C-F.R. Part 600.

### 3. **Use of Public Lands**

No publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance may be used for the Project unless specific findings required by 49 U.S.C. § 303 are made by U.S. DOT.

### 4. **Historic Preservation**

The Authority agrees to assist the Federal Government and comply with section 106 of the National Historic Preservation Act, 16 U. S.C. § 470f, involving historic and archaeological preservation by:

- a. Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and notifying the Federal Government (FTA) of the existence of any such properties; and
- b. Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties.

### 5. **Energy Conservation**

The Contractor, Subcontractors and its third-party contractors shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

### 6. **Mitigation of Adverse Environmental Effects**

Should the proposed Project cause adverse environmental effects, the Authority agrees to take all reasonable steps to minimize such effects pursuant to 49 U.S.C. app. § 1610, all other applicable statutes, and the procedures set forth in 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Authority agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable Environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 U.S.C. § 303) and with any conditions imposed by the Federal Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Contract, the December 1993 FTA Grant Agreement with the MBTA (Agreement), by reference. As soon as the Federal Government and the Authority reach

agreement on any mitigation measures that have been deferred, those measures will then be incorporated into this Agreement. Such mitigation measures may not be modified or withdrawn without the express written approval of the Federal Government.

7. The Contractor, Subcontractors and its third party contractors with all applicable standards, orders, or requirements issued under section 306 of Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clear Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, Subcontracts, and subgrants of amounts in excess of \$100,000).

## **8. Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **9. Clean Water**

(1)The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

## **10. Recovered Materials**

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **H. NOTICE OF FEDERAL REQUIREMENTS**

The Contractor is advised that Federal requirements applicable to this contract as set forth in federal law, regulations, policies, and related administrative practices may change during the performance of this contract. Any such changes shall also apply to this contract.

The following provisions included, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the following contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall

be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of the FTA terms and conditions.

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives. These include without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (8)) between the Authority and the FTA, as they may be amended or promulgated from time to time during this term of this contract. The Contractor's failure to comply shall constitute a material breach of contract.

## **I. RECORD RETENTION**

Retention of all required records for 6 years after the MBTA makes final payment and all other pending matters are closed. **[Refer to Authority's General Conditions Article 2.11]**

## **J. ADA - Access Requirements for Individuals with Disabilities**

The Contractor agrees to comply with, and assure that any subcontractor and third party contractors, under this Project comply with all applicable requirements of the Americans with Disabilities Act Of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29

U.S.C. § 794; section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. §1612; and the following regulations and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA), 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
3. U.S. DOT regulations, " Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles, " 49 C.F.R. Part 38;
4. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R., Part 35;
5. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36.
6. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
7. Equal Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and



9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

**K. BUY AMERICA CERTIFICATION**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds.

A bidder or offeror must submit to the FTA Authority the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. ***[For Certification Forms, refer to Bid Form].***

**L. FLY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**M. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**N. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
- (4) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA

#### **O. TERMINATION**

Termination for cause and convenience by the grantee for subgrantee including the manner by which it will be affected and the basis for settlement, (all contracts in excess of \$10,000). ***[Refer to Authority's General Conditions and Supplementary Conditions]***.

#### **P. REMEDIES / BREACH OF CONTRACT**

Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. ***[Refer to Authority's General Conditions and Supplementary Conditions]***.

#### **Q. INTEGRITY CERTIFICATION**

1. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. ***[Refer to Bid Form***
  - a. **Instructions for Certification - Primary Covered Transactions:**  
**(Applicable to all Federal contracts - 49 C.F.R. Part 29).**

1. By signing and submitting this Proposal, the prospective participant is providing the certification set out below.
2. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of this prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntary excluded," as used in this clause, have the meanings set out in this Definitions and Coverage Sections of rules implementing Executive Order 12549. You may contact the department or agency to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this agreement.
7. The Prospective primary participant further agrees by submitting this Proposal that it will include this clause titled "Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lowered tier covered transactions.

A participation in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement of the "List of Parties Excluded From Federal Procurement of Nonprocurement" (Nonprocurement List) which is compiled by the General Services Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph(f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Primary Covered Transactions ***[Refer to Bid Form]***

a. **The prospective primary participant certifies to the best of its knowledge and belief, that it and its principle:**

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a 3 year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction of contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1b) of this certification.
4. Have not within a 3 year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default

b. **Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.**

c. **Instructions for Certification - Lower Tier Covered Transactions: (Applicable to all subcontracts, purchase orders and other tier transactions of \$25,000 or more -49 C.F.R. 29).**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly

rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, have meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include in this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participation in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (e) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**d. The prospective lower tier participant certifies, by submission of this**

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**proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.**

- e. **Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.**

**R. LOBBYING CERTIFICATION**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] -** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. ***[Refer to Bid Form]***.

**S. NONDISCRIMINATION - Pursuant to Department of Labor regulations at 41 C.F.R. §§ 60-1.4(b)(1) and 60-1.4(c):**

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:
  - a. THE CONTRACTOR WILL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGION, SEX, AGE, DISABILITY, OR NATIONAL ORIGIN. THE CONTRACTOR WILL TAKE AFFIRMATIVE ACTION TO ENSURE THAT APPLICANTS ARE EMPLOYED, AND THAT EMPLOYEES ARE TREATED DURING EMPLOYMENT WITHOUT REGARD TO THEIR RACE, COLOR, RELIGION, SEX, AGE, DISABILITY OR NATIONAL ORIGIN. SUCH ACTION SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: EMPLOYMENT, UPGRADING, DEMOTION, OR TRANSFER; RECRUITMENT OR RECRUITMENT ADVERTISING; LAYOFF OR TERMINATION; RATES OF PAY OR OTHER FORMS OF COMPENSATION; AND SELECTION FOR TRAINING, INCLUDING APPRENTICESHIP. THE CONTRACTOR AGREES CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES TO BE PROVIDED, SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
  - b. THE CONTRACTOR WILL, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE CONTRACTOR, STATE THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, AGE, DISABILITY, OR NATIONAL ORIGIN.

- c. THE CONTRACTOR WILL SEND TO EACH LABOR UNION OR REPRESENTATIVE OF WORKERS WITH WHICH IT HAS A COLLECTIVE BARGAINING AGREEMENT OR OTHER CONTRACT OR UNDERSTANDING, A NOTICE TO BE PROVIDED ADVISING THE LABOR UNION OR WORKERS REPRESENTATIVE OF THE CONTRACTOR'S COMMITMENTS UNDER SECTION 202 OF EXECUTIVE ORDER NO. 11246 OF SEPTEMBER 24, 1965, AND SHALL POST COPIES OF THE NOTICE IN CONSPICUOUS PLACES AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT.
- d. THE CONTRACTOR WILL COMPLY WITH ALL PROVISIONS OF EXECUTIVE ORDER NO. 11246 OF SEPTEMBER 24, 1965, AND OF THE RULES, REGULATIONS, AND RELEVANT ORDERS OF THE SECRETARY OF LABOR.
- e. THE CONTRACTOR WILL FURNISH ALL INFORMATION AND REPORTS REQUIRED BY EXECUTIVE ORDER NO. 11246 OF SEPTEMBER 24, 1965, AND BY THE RULES, REGULATIONS, AND ORDERS OF THE SECRETARY OF LABOR, OR PURSUANT THERETO, AND WILL PERMIT ACCESS TO ITS BOOKS, RECORDS AND ACCOUNTS BY THE SECRETARY OF LABOR AND THE FEDERAL TRANSIT ADMINISTRATION (FTA) FOR PURPOSES OF INVESTIGATION TO ASCERTAIN COMPLIANCE WITH SUCH RULES, REGULATIONS, AND ORDERS.
- f. IN THE EVENT OF THE CONTRACTOR'S NONCOMPLIANCE WITH THE NONDISCRIMINATION CLAUSES OF THIS AGREEMENT OR WITH ANY OF SUCH RULES, REGULATIONS, OR ORDERS, THIS AGREEMENT MAY BE CANCELED, TERMINATED, OR SUSPENDED IN WHOLE OR IN PART AND THE CONTRACTOR MAY BE DECLARED INELIGIBLE FOR FURTHER FEDERAL OR FEDERALLY ASSISTED CONTRACTS IN ACCORDANCE WITH PROCEDURES AUTHORIZED IN EXECUTIVE ORDER NO. 11246 OF SEPTEMBER 24, 1965, AND SUCH OTHER SANCTIONS MAY BE IMPOSED AND REMEDIES INVOKED AS PROVIDED IN EXECUTIVE ORDER NO. 11246 OF SEPTEMBER 24, 1965, OR BY RULE, REGULATION, OR ORDER OF THE SECRETARY OF LABOR, OR AS OTHERWISE PROVIDED BY LAW.
- g. THE CONTRACTOR WILL INCLUDE THE PROVISIONS OF PARAGRAPHS(a) THROUGH (g) OF THIS SUBSECTION IN EVERY SUBCONTRACT OR PURCHASE ORDER UNLESS EXEMPTED BY RULES, REGULATIONS, OR ORDERS OF THE SECRETARY OF LABOR ISSUED PURSUANT TO SECTION 204 OF EXECUTIVE ORDER NO. 11246 OF SEPTEMBER 24, 1965, SO THAT SUCH PROVISIONS SHALL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR. THE CONTRACTOR WILL TAKE SUCH ACTION WITH RESPECT TO ANY SUBCONTRACT OR PURCHASE ORDER AS THE SECRETARY OF LABOR OR FTA MAY DIRECT AS A MEANS OF ENFORCING SUCH PROVISIONS, INCLUDING SANCTIONS FOR NONCOMPLIANCE; PROVIDED, HOWEVER, THAT IF A CONTRACTOR BECOMES INVOLVED IN, OR IS THREATENED WITH, LITIGATION WITH A SUBCONTRACTOR OR VENDOR AS A RESULT OF SUCH DIRECTION, THE CONTRACTOR MAY REQUEST THE UNITED STATES TO ENTER INTO SUCH LITIGATION TO PROTECT THE INTERESTS OF THE UNITED STATES.

#### **T. LIQUIDATED DAMAGES**

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***Refer to Supplementary Conditions Article 2.B***

**U. LABOR PROVISIONS.**

**1. Labor Provisions - Construction**

**a. Minimum Wages**

- (1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the Wage Determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a) (1)(iv) of 29 CFR Sec. 5.5; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Sec. 5.5 (a) (4).

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a) (1) (ii) of 29 CFR Sec. 5.5 and the Davis-Bacon Poster (WH-132) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2) The Contracting Office shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Office shall approve an additional classification and wage rate and fringe benefits therefor, only when the following criteria have been met:

(a) The work to be performed by the classification requested is not performed by a classification in the wage determination: and

(b) The classification is utilized in the area by the construction industry: and

(c) The proposed wage rate, including any bona fide fringe benefits,



bears a reasonable relationship to the wage rates contained in the wage determination.

- (3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administration of the Wage and hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within a 30 day period that additional time is necessary.
- (4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (5) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraph (a) (1) (B) or (C) of 29 CFR Sec. 5.5 shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (6) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (7) If the Contractor does not make payments to a trustee or other third person the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found upon the written request of the Contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (8)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (b) The classification is utilized in the area by the construction industry; and
  - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30- day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

## 2. **Withholding**

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DOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal Contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments of advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Transportation may, after written notice to the Contractor, sponsor, applicant, or owner, take such any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. **Payrolls and Basic Records**

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project). Such records shall contain the name, address, and social security number of each worker, his or her correct classification, hourly rates of wages paid including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof the types described in Section 1 (b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR Sec. 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b) (2) (b) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program has been communicated in writing to the labors or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices and trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- b. The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Transportation if the Department of Transportation is a party to the Contract, but if the Department of Transportation is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Department of Transportation. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Sec. 5.5 (a) (3) (I) of regulations, 29 CFR Part 5. This information may

be submitted in any form desired. Optional form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- c. Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
  - (1) That the payroll for the payroll period contains the information required to be maintained under Sec. 5.5 (a) (3) (I) of regulations, 29 CFR Part 5 and that such information is correct and complete.
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in regulations, 29 CFR Part 3.
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- d. The weekly submission of a properly executed certification set forth on the reverse side of Optional form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a) (3) (ii) (b) of 29 CFR Sec. 5.5.
- e. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- f. The Contractor or subcontractor shall make the records required under paragraph (a) (3) (I) of 29 CFR Sec. 5.5 available for inspection, copying, or transcription by authorized representatives of the Department of Transportation or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal Agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Sec. 5.12.

#### **4. Apprentices and Trainees - Apprentices**

- a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and

individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training, or with a State Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on the payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above shall not be paid less than the applicable wage determination for the work actually performed. In addition, any apprentice performing work on the job site in excess of the ration permitted under the registered program shall not be paid less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits, in accordance with the provisions of the apprentice program. If the apprentice program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an Apprenticeship Program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. **Trainees** Except as provided in 29 CFR Sec. 5.16, Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidence by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provision of the trainee program

If the trainees program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination

unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman's wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the employment and training administration shall not be paid less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. **Equal Employment Opportunity** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the Equal Employment Opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act Requirements**

The Contractor shall comply with the requirements of the 29 CFR Part 3, which are incorporated by reference.

6. **Subcontracts**

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. **Contract Termination: Debarment**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements**

All rulings and interpretations of the Davis-Bacon and related acts contained in 29 CFR Parts 1,3 and 5 are herein incorporated by reference in this contract.

9. **Disputes Concerning Labor Standards**

Disputes arising out of the Labor Standards Provisions of this Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth

in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting Agency, the U.S. Department of Labor, or the employees or their representatives.

#### **10. Certification of Eligibility**

By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of section 3 (a) of the Davis-Bacon Act or 29 CFR Sec. 5.12 (a) (1).

- a. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of section 3 (a) of the Davis-Bacon Act or 29 CFR Sec. 5.12(a) (1).
- b. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S. C. Sec. 1001.

#### **11. Overtime Requirements**

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate of pay for all hours worked in excess of eight hours, in any calendar day or in excess of forty hours in such work week, whichever is greater.

#### **12. Violation: Liability for Unpaid Wages: Liquidated Damages**

In the event of any violation of the clause set forth in subparagraph (b) (1) 29 CFR Sec. 5.5, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR Sec. 5.5 in the sum of \$10 for each calendar day or which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) or 29 CFR Sec. 5.

#### **13. Withholding for Unpaid Wages and Liquidated Damages**

The Department of Transportation or the recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally

assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Sec. 5.5.

**14. Nonconstruction Contracts**

In addition to the clauses contained in 29 CFR Sec. 5.5 (b) (10) through (14), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Sec. 5.1., the recipient shall insert a clause requiring that the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the names and address of each employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient shall require the Contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Transportation and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during work hours on the job.

**15. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph 1 through 12 of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraph 1 through 14 of this paragraph.

**16. Certified Payroll - Construction Projects (11/7/77)**

The Authority shall obtain from each Contractor and subcontractor a certified copy of each weekly payroll within seven days after the regular payroll date. Following a review by the Authority for compliance with State and Federal Labor Laws, the payroll copy shall be retained at the project site for later review by the Federal Transportation Administration. The Contractor must use the Department of Labor Form WH-347 (pages 1 and 2), which provides all the necessary payroll information and certifications or they will be in violation of compliance. A copy of this form is attached as pages 68 and 69 of this Section.

**17. Disadvantaged Business Enterprise Policy.** It is the policy of the Department of Transportation that minority business enterprises, as defined in 49 CFR Part 26, shall have the opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 26 apply to this agreement.

**18. DBE Obligation.** The Authority and its contractors agree to ensure that minority business enterprises as defined in 49 CFR Part 26 have the opportunity to



participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard the Authority and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The Authority and its contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT assisted contracts.

## **V. INTERESTS OF MEMBERS OF CONGRESS**

Interest of Members of Congress. No Member of or delegate to the Congress of the United States shall be admitted to any share or part of this Project or to any benefit therefrom.

## **W. DEBARRED BIDDERS - DEBARMENT AND SUSPENSION**

The Authority agrees to obtain certifications on debarment and suspension from its third party contractors and subcontractors and otherwise comply with U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work place (Grants)," 49 C.F.R. 29.

1. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a Governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.
2. These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:
  - a. Prescribing the programs and activities that are covered by the governmentwide system;
  - b. Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;
  - c. Providing for the listing of debarred and suspended participants declared ineligible and participants who have voluntarily excluded themselves from participation in covered transactions;
  - d. Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and
  - e. Offering such guidance as necessary for the effective implementation and administration of the governmentwide system.
3. Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

## **X. INSURANCE /BONDING - INSURANCE DURING CONSTRUCTION**

At a minimum, the Contractor agrees to comply with the insurance requirements normally imposed by its State and local governments. *[Refer to General Conditions, Supplementary Conditions and Contract Bond Forms]*

## **Y. PROJECT SIGNS**

The Contractor agrees to cause to be erected at the site of construction, and maintained during construction, signs satisfactory to U.S. DOT identifying the Project and indicating that the Government is participating in the development of the Project. ***[Refer to Division 1, General Requirements]***

## **Z. CERTIFIED PAYROLL - CONSTRUCTION PROJECTS**

The Authority shall obtain from each Contractor and subcontractor a certified copy of each weekly payroll within seven days after the regular payroll date. Following a review by the Authority for compliance with State and Federal Labor Laws, the payroll copy shall be retained at the project site for later review by the Federal Transportation Administration. The Contractor must use the Department of Labor Form WH-347 (pages 1 and 2) which provides all the necessary payroll information and certifications or they will be in violation of compliance.

## **AA. DISADVANTAGED BUSINESS ENTERPRISE**

**Policy.** It is the policy of the Department of Transportation that minority business enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

## **BB. DBE OBLIGATION.**

The Authority and its contractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard the Authority and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the opportunity to compete for and perform contracts. The Authority and its contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT assisted contracts

## **CC. MINIMUM FEDERAL WAGE RATES**

Minimum wages to be paid on this construction project have been established by Wage Predetermination Decisions of the U. S. Secretary of Labor. These wage rates must be prominently posted at the construction site.

### **1. Wage Determination Decision**

Wage predetermination decisions of the U. S. Secretary of Labor are incorporated herein as follows:

**(SAMPLE)**

- a. MA \_\_\_\_\_ with Modification Nos. \_\_\_\_ through \_\_\_\_ for \_\_\_\_\_ County (see pages 00800-\_\_\_\_ through 00800-\_\_\_\_).

**DD. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

**STANDARD FEDERAL EQUAL EMPLOYMENT  
OPPORTUNITY CONSTRUCTION CONTRACT  
SPECIFICATIONS  
(EXECUTIVE ORDER NO.  
11246):**

1. AS USED IN THESE SPECIFICATIONS:
  - a. "COVERED AREA" MEANS THE GEOGRAPHICAL AREA DESCRIBED IN THE SOLICITATION FROM WHICH THIS CONTRACT RESULTED;
  - b. "DIRECTOR" MEANS DIRECTOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, OR ANY PERSON TO WHOM THE DIRECTOR DELEGATES AUTHORITY;
  - c. "EMPLOYER IDENTIFICATION NUMBER" MEANS THE FEDERAL SOCIAL SECURITY NUMBER USED ON THE EMPLOYER'S QUARTERLY FEDERAL TAX RETURN, U.S. TREASURY DEPARTMENT FORM 941;
  - d. "MINORITY" INCLUDES:
    - (i) BLACK (ALL PERSONS HAVING ORIGINS IN ANY OF THE BLACK AFRICAN RACIAL GROUPS NOT OF HISPANIC ORIGIN);
    - (ii) HISPANIC (ALL PERSONS OF MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR OTHER SPANISH CULTURE OR ORIGIN, REGARDLESS OF RACE);
    - (iii) ASIAN AND PACIFIC ISLANDER (ALL PERSONS HAVING ORIGINS IN ANY OF THE ORIGINAL PEOPLES OF THE FAR EAST, SOUTHEAST ASIA, THE INDIAN SUBCONTINENT, OR THE PACIFIC ISLANDS); AND
    - (iv) AMERICAN INDIAN OR ALASKAN NATIVE (ALL PERSONS HAVING ORIGINS IN ANY OF THE ORIGINAL PEOPLES OF NORTH AMERICA AND MAINTAINING IDENTIFIABLE TRIBAL AFFILIATIONS THROUGH MEMBERSHIP AND PARTICIPATION OR COMMUNITY IDENTIFICATION).
2. WHENEVER THE CONTRACTOR, OR SUBCONTRACTOR AT ANY TIER, SUBCONTRACTS A PORTION OF THE WORK INVOLVING ANY CONSTRUCTION TRADE, IT SHALL PHYSICALLY INCLUDE IN EACH SUBCONTRACT IN EXCESS OF \$10,000 THE PROVISIONS OF THESE SPECIFICATIONS AND THE NOTICE WHICH CONTAINS THE APPLICABLE GOALS FOR MINORITY AND FEMALE PARTICIPATION AND WHICH IS SET FORTH IN THE SOLICITATIONS FROM WHICH THIS CONTRACT RESULTED.
3. IF THE CONTRACTOR IS PARTICIPATING (PURSUANT TO 41 C.F.R. § 60-4.5) IN A HOMETOWN PLAN APPROVED BY THE U. S. DEPARTMENT OF LABOR IN THE COVERED AREA, EITHER INDIVIDUALLY OR THROUGH AN ASSOCIATION, ITS AFFIRMATIVE ACTION OBLIGATIONS ON ALL WORK IN THE PLAN AREA (INCLUDING GOALS AND TIMETABLES) SHALL BE IN ACCORDANCE WITH THAT PLAN FOR THOSE TRADES WHICH HAVE UNIONS PARTICIPATING IN THE PLAN.

CONTRACTORS MUST BE ABLE TO DEMONSTRATE THEIR PARTICIPATION IN AND COMPLIANCE WITH THE PROVISIONS OF ANY SUCH HOMETOWN PLAN. EACH CONTRACTOR OR SUBCONTRACTOR PARTICIPATING IN AN APPROVED PLAN

IS INDIVIDUALLY REQUIRED TO COMPLY WITH ITS OBLIGATIONS UNDER THE EEO CLAUSE, AND TO MAKE A GOOD FAITH EFFORT TO ACHIEVE EACH GOAL UNDER THE PLAN IN EACH TRADE IN WHICH IT HAS EMPLOYEES. THE OVERALL GOOD FAITH PERFORMANCE BY OTHER CONTRACTORS OR SUBCONTRACTORS TOWARD A GOAL IN AN APPROVED PLAN DOES NOT EXCUSE ANY COVERED CONTRACTOR'S OR SUBCONTRACTOR'S FAILURE TO MAKE GOOD FAITH EFFORTS TO ACHIEVE THE PLAN GOALS AND TIMETABLES.

4. THE CONTRACTOR SHALL IMPLEMENT THE SPECIFIC AFFIRMATIVE ACTION STANDARDS PROVIDED IN PARAGRAPHS (7)(a) THROUGH (p) OF THESE SPECIFICATIONS. THE GOALS SET FORTH IN THE SOLICITATION FROM WHICH THIS CONTRACT RESULTED ARE EXPRESSED AS PERCENTAGES OF THE TOTAL HOURS OF EMPLOYMENT AND TRAINING OF MINORITY AND FEMALE UTILIZATION THE CONTRACTOR SHOULD REASONABLY BE ABLE TO ACHIEVE IN EACH CONSTRUCTION TRADE IN WHICH IT HAS EMPLOYEES IN THE COVERED AREA. COVERED CONSTRUCTION CONTRACTORS PERFORMING CONSTRUCTION WORK IN GEOGRAPHICAL AREAS WHERE THEY DO NOT HAVE A FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION CONTRACT SHALL APPLY THE MINORITY AND FEMALE GOALS ESTABLISHED FOR THE GEOGRAPHICAL AREA WHERE THE WORK IS BEING PERFORMED. GOALS ARE PUBLISHED PERIODICALLY IN THE FEDERAL REGISTER IN NOTICE FORM, AND SUCH NOTICES MAY BE OBTAINED FROM ANY OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS OFFICE OR FROM FEDERAL PROCUREMENT CONTRACTING OFFICERS. THE CONTRACTOR IS EXPECTED TO MAKE SUBSTANTIALLY UNIFORM PROGRESS TOWARD ITS GOAL IN EACH CRAFT DURING THE PERIOD SPECIFIED.
5. NEITHER THE PROVISIONS OF ANY COLLECTIVE BARGAINING AGREEMENT, NOR THE FAILURE BY A UNION WITH WHOM THE CONTRACTOR HAS A COLLECTIVE BARGAINING AGREEMENT TO REFER EITHER MINORITIES OR WOMEN SHALL EXCUSE THE CONTRACTOR'S OBLIGATIONS UNDER THESE SPECIFICATIONS, EXECUTIVE ORDER NO. 11246, OR THE REGULATIONS PROMULGATED PURSUANT THERETO.
6. IN ORDER FOR THE NONWORKING TRAINING HOURS OF APPRENTICES AND TRAINEES TO BE COUNTED IN MEETING THE GOALS, SUCH APPRENTICES AND TRAINEES MUST BE EMPLOYED BY THE CONTRACTOR DURING THE TRAINING PERIOD, AND THE CONTRACTOR MUST HAVE MADE A COMMITMENT TO EMPLOY THE APPRENTICES AND TRAINEES AT THE COMPLETION OF THEIR TRAINING, SUBJECT TO THE AVAILABILITY OF EMPLOYMENT OPPORTUNITIES. TRAINEES MUST BE TRAINED PURSUANT TO TRAINING PROGRAMS APPROVED BY THE U.S. DEPARTMENT OF LABOR.
7. THE CONTRACTOR SHALL TAKE SPECIFIC AFFIRMATIVE ACTIONS TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY. THE EVALUATION OF THE CONTRACTOR'S COMPLIANCE WITH THESE SPECIFICATIONS SHALL BE BASED UPON ITS EFFORT TO ACHIEVE MAXIMUM RESULTS FROM ITS ACTIONS. THE CONTRACTOR SHALL DOCUMENT THESE EFFORTS FULLY, AND SHALL IMPLEMENT AFFIRMATIVE ACTION STEPS AT LEAST AS EXTENSIVE AS THE FOLLOWING:

a. ENSURE AND MAINTAIN A WORKING ENVIRONMENT FREE OF

HARASSMENT, INTIMIDATION, AND COERCION AT ALL SITES, AND IN ALL FACILITIES AT WHICH THE CONTRACTOR'S EMPLOYEES ARE ASSIGNED TO WORK. THE CONTRACTOR, WHERE POSSIBLE, WILL ASSIGN TWO OR MORE WOMEN TO EACH CONSTRUCTION PROJECT. THE CONTRACTOR SHALL SPECIFICALLY ENSURE THAT ALL FOREMEN, SUPERINTENDENTS, AND OTHER ON-SITE SUPERVISORY PERSONNEL ARE AWARE OF AND CARRY OUT THE CONTRACTOR'S OBLIGATION TO MAINTAIN SUCH A WORKING ENVIRONMENT, WITH SPECIFIC ATTENTION TO MINORITY OR FEMALE INDIVIDUALS WORKING AT SUCH SITES OR IN SUCH FACILITIES.

- b. ESTABLISH AND MAINTAIN A CURRENT LIST OF MINORITY AND FEMALE RECRUITMENT SOURCES, PROVIDE WRITTEN NOTICE TO MINORITY AND FEMALE RECRUITMENT SOURCES AND TO COMMUNITY ORGANIZATIONS WHEN THE CONTRACTOR OR ITS UNIONS HAVE EMPLOYMENT OPPORTUNITIES AVAILABLE, AND MAINTAIN A RECORD OF THE ORGANIZATIONS' RESPONSES.
- c. MAINTAIN A CURRENT FILE OF THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF EACH MINORITY AND FEMALE OFF-THE-STREET APPLICANT AND MINORITY OR FEMALE REFERRAL FROM A UNION, A RECRUITMENT SOURCE OR COMMUNITY ORGANIZATION AND OF WHAT ACTION WAS TAKEN WITH RESPECT TO EACH SUCH INDIVIDUAL. IF SUCH INDIVIDUAL WAS SENT TO THE UNION HIRING HALL FOR REFERRAL AND WAS NOT REFERRED BACK TO THE CONTRACTOR BY THE UNION OR, IF REFERRED, NOT EMPLOYED BY THE CONTRACTOR, THIS SHALL BE DOCUMENTED IN THE FILE WITH THE REASON THEREFOR, ALONG WITH WHATEVER ADDITIONAL ACTIONS THE CONTRACTOR MAY HAVE TAKEN.
- d. PROVIDE IMMEDIATE WRITTEN NOTIFICATION TO THE DIRECTOR WHEN THE UNION OR UNIONS WITH WHICH THE CONTRACTOR HAS A COLLECTIVE BARGAINING AGREEMENT HAS NOT REFERRED TO THE CONTRACTOR A MINORITY PERSON OR WOMAN SENT BY THE CONTRACTOR, OR WHEN THE CONTRACTOR HAS OTHER INFORMATION THAT THE UNION REFERRAL PROCESS HAS IMPEDED THE CONTRACTOR'S EFFORT'S TO MEET ITS OBLIGATIONS.
- e. DEVELOP ON-THE-JOB OPPORTUNITIES AND/OR PARTICIPATE IN TRAINING PROGRAMS FOR THE AREA WHICH EXPRESSLY INCLUDE MINORITIES AND WOMEN, INCLUDING UPGRADING PROGRAMS AND APPRENTICESHIP AND TRAINEE PROGRAMS RELEVANT TO THE CONTRACTOR'S EMPLOYMENT NEEDS, ESPECIALLY THOSE PROGRAMS FUNDED OR APPROVED BY THE DEPARTMENT OF LABOR. THE CONTRACTOR SHALL PROVIDE NOTICE OF THESE PROGRAMS TO THE SOURCES COMPILED UNDER (7)(b) ABOVE.
- f. DISSEMINATE THE CONTRACTOR'S EEO POLICY BY PROVIDING NOTICE OF THE POLICY TO UNIONS AND TRAINING PROGRAMS AND REQUESTING THEIR COOPERATION IN ASSISTING THE CONTRACTOR IN MEETING ITS EEO OBLIGATIONS; BY INCLUDING IT IN ANY POLICY MANUAL AND COLLECTIVE BARGAINING AGREEMENT; BY PUBLICIZING IT IN THE COMPANY NEWSPAPER, ANNUAL REPORT, ETC.; BY SPECIFIC REVIEW OF THE POLICY WITH ALL MANAGEMENT PERSONNEL AND WITH ALL MINORITY AND FEMALE EMPLOYEES AT LEAST ONCE A YEAR; AND BY POSTING THE COMPANY EEO POLICY ON BULLETIN BOARDS ACCESSIBLE TO ALL EMPLOYEES AT EACH LOCATION WHERE CONSTRUCTION WORK IS PERFORMED.

- g. REVIEW, AT LEAST ANNUALLY, THE COMPANY'S EEO POLICY AND AFFIRMATIVE ACTION OBLIGATIONS UNDER THESE SPECIFICATIONS WITH ALL EMPLOYEES HAVING RESPONSIBILITY FOR HIRING, ASSIGNMENT, LAYOFF, TERMINATION OR OTHER EMPLOYMENT DECISIONS INCLUDING SPECIFIC REVIEW OF THESE ITEMS WITH ON- SITE SUPERVISORY PERSONNEL SUCH AS SUPERINTENDENTS, GENERAL FOREMAN, ETC., PRIOR TO THE INITIATION OF CONSTRUCTION WORK AT ANY JOB SITE. A WRITTEN RECORD SHALL BE MADE AND MAINTAINED IDENTIFYING THE TIME AND PLACE OF THESE MEETINGS, PERSONS ATTENDING, SUBJECT MATTER DISCUSSED, AND DISPOSITION OF THE SUBJECT MATTER.
- h. DISSEMINATE THE CONTRACTOR'S EEO POLICY EXTERNALLY BY INCLUDING IT IN ANY ADVERTISING IN THE NEWS MEDIA, SPECIFICALLY INCLUDING MINORITY AND FEMALE NEWS MEDIA, AND PROVIDING WRITTEN NOTIFICATION TO AND DISCUSSING THE CONTRACTOR'S EEO POLICY WITH OTHER CONTRACTORS AND SUBCONTRACTORS WITH WHOM THE CONTRACTOR DOES OR ANTICIPATES DOING BUSINESS.
- i. DIRECT RECRUITMENT EFFORTS, BOTH ORAL AND WRITTEN, TO MINORITY, FEMALE, AND COMMUNITY ORGANIZATIONS, TO SCHOOLS WITH MINORITY AND FEMALE STUDENTS AND TO MINORITY AND FEMALE RECRUITMENT AND TRAINING ORGANIZATIONS SERVING THE CONTRACTOR'S RECRUITMENT AREA AND EMPLOYMENT NEEDS. NOT LATER THAN ONE MONTH PRIOR TO THE DATE FOR THE ACCEPTANCE OF APPLICATIONS FOR APPRENTICESHIP OR OTHER TRAINING BY ANY RECRUITMENT SOURCE, THE CONTRACTOR SHALL SEND WRITTEN NOTICE TO ORGANIZATIONS SUCH AS THE ABOVE, DESCRIBING THE OPENINGS, SCREENING PROCEDURES, AND TESTS TO BE USED IN THE SELECTION PROCESS.
- j. ENCOURAGE PRESENT MINORITY AND FEMALE EMPLOYEES TO RECRUIT OTHER MINORITY PERSONS AND WOMEN AND, WHERE REASONABLE, PROVIDE AFTER SCHOOL, SUMMER AND VACATION EMPLOYMENT TO MINORITY AND FEMALE YOUTH BOTH ON THE SITE AND IN OTHER AREAS OF THE CONTRACTOR'S WORK FORCE.
- k. VALIDATE ALL TESTS AND OTHER SELECTION REQUIREMENTS WHERE THERE IS AN OBLIGATION TO DO SO UNDER 41 C.F.R. PART 60-3.
- l. CONDUCT, AT LEAST ANNUALLY, AN INVENTORY AND EVALUATION AT LEAST OF ALL MINORITY AND FEMALE PERSONNEL FOR PROMOTIONAL OPPORTUNITIES AND ENCOURAGE THESE EMPLOYEES TO SEEK OR PREPARE FOR, THROUGH APPROPRIATE TRAINING, ETC., SUCH OPPORTUNITIES.
- m. ENSURE THAT SENIORITY PRACTICES, JOB CLASSIFICATIONS, WORK ASSIGNMENTS, AND OTHER PERSONNEL PRACTICES DO NOT HAVE A DISCRIMINATORY EFFECT BY CONTINUALLY MONITORING ALL PERSONNEL AND EMPLOYMENT RELATED ACTIVITIES TO ENSURE THAT THE EEO POLICY AND THE CONTRACTOR'S OBLIGATIONS UNDER THESE SPECIFICATIONS ARE BEING CARRIED OUT.
- n. ENSURE THAT ALL FACILITIES AND COMPANY ACTIVITIES ARE NONSEGREGATED EXCEPT THAT SEPARATE OR SINGLE-USER TOILET AND NECESSARY CHANGING FACILITIES SHALL BE PROVIDED TO ASSURE PRIVACY BETWEEN SEXES.

- o. DOCUMENT AND MAINTAIN A RECORD OF ALL SOLICITATIONS OF OFFERS FOR SUBCONTRACTS FROM MINORITY AND FEMALE CONSTRUCTION CONTRACTORS AND SUPPLIERS, INCLUDING CIRCULATION OF SOLICITATIONS TO MINORITY AND FEMALE CONTRACTOR ASSOCIATIONS AND OTHER BUSINESS ASSOCIATIONS.
- p. CONDUCT A REVIEW, AT LEAST ANNUALLY, OF ALL SUPERVISORS' ADHERENCE TO AND PERFORMANCE UNDER THE CONTRACTOR'S EEO POLICIES AND AFFIRMATIVE ACTION OBLIGATIONS.

8. CONTRACTORS ARE ENCOURAGED TO PARTICIPATE IN VOLUNTARY ASSOCIATIONS THAT ASSIST IN FULFILLING ONE OR MORE OF THEIR AFFIRMATIVE ACTION OBLIGATIONS SET FORTH IN PARAGRAPHS (7)(a) THROUGH (p). THE EFFORTS OF A CONTRACTOR ASSOCIATION, JOINT CONTRACTOR-UNION, CONTRACTOR-COMMUNITY, OR OTHER SIMILAR GROUP OF WHICH THE CONTRACTOR IS A MEMBER AND PARTICIPANT, MAY BE ASSERTED AS FULFILLING ANY ONE OR MORE OF ITS OBLIGATIONS UNDER PARAGRAPHS (7)(a) THROUGH (p) OF THESE SPECIFICATIONS, PROVIDED THAT THE CONTRACTOR ACTIVELY PARTICIPATES IN THE GROUP, MAKES EVERY EFFORT TO ASSURE THAT THE GROUP HAS A POSITIVE IMPACT ON THE EMPLOYMENT OF MINORITIES AND WOMEN IN THE INDUSTRY, ENSURES THAT THE CONCRETE BENEFITS OF THE PROGRAM ARE REFLECTED IN THE CONTRACTOR'S MINORITY AND FEMALE WORK FORCE PARTICIPATION, MAKES A GOOD FAITH EFFORT TO MEET ITS INDIVIDUAL GOALS AND TIMETABLES, AND CAN PROVIDE ACCESS TO DOCUMENTATION THAT DEMONSTRATES THE EFFECTIVENESS OF ACTIONS TAKEN ON BEHALF OF THE CONTRACTOR. THE OBLIGATION TO COMPLY, HOWEVER, IS THE CONTRACTOR'S AND FAILURE OF SUCH A GROUP TO FULFILL AN OBLIGATION SHALL NOT BE A DEFENSE FOR THE CONTRACTOR'S NONCOMPLIANCE.

9. A SINGLE GOAL FOR MINORITIES AND A SEPARATE SINGLE GOAL FOR WOMEN HAVE BEEN ESTABLISHED. THE CONTRACTOR, HOWEVER, IS REQUIRED TO PROVIDE EQUAL EMPLOYMENT OPPORTUNITY AND TO TAKE AFFIRMATIVE ACTION FOR ALL MINORITY GROUPS, BOTH MALE AND FEMALE, AND ALL WOMEN, BOTH MINORITY AND NON- MINORITY. CONSEQUENTLY, THE CONTRACTOR MAY BE IN VIOLATION OF THE EXECUTIVE ORDER IF A PARTICULAR GROUP IS EMPLOYED IN A SUBSTANTIALLY DISPARATE MANNER (EVEN THOUGH THE CONTRACTOR HAS ACHIEVED ITS GOAL FOR WOMEN GENERALLY, THE CONTRACTOR MAY BE IN VIOLATION OF THE EXECUTIVE ORDER IF A SPECIFIC MINORITY GROUP OF WOMEN IS UNDERUTILIZED).

10. THE CONTRACTOR SHALL NOT USE THE GOALS AND TIMETABLES OR AFFIRMATIVE ACTION STANDARDS TO DISCRIMINATE AGAINST ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN.

11. THE CONTRACTOR SHALL NOT ENTER INTO ANY SUBCONTRACT WITH ANY PERSON OR FIRM DEBARRED FROM GOVERNMENT CONTRACTS PURSUANT TO EXECUTIVE ORDER NO. 11246.

12. THE CONTRACTOR SHALL CARRY OUT SUCH SANCTIONS AND PENALTIES FOR VIOLATION OF THESE SPECIFICATIONS AND OF THE EQUAL OPPORTUNITY CLAUSE, INCLUDING SUSPENSION, TERMINATION AND CANCELLATION OF EXISTING SUBCONTRACTS AS MAY BE IMPOSED OR ORDERED PURSUANT TO



EXECUTIVE ORDER NO. 11246, AS AMENDED, AND ITS IMPLEMENTING REGULATIONS, BY THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS. ANY CONTRACTOR WHO FAILS TO CARRY OUT SUCH SANCTIONS AND PENALTIES SHALL BE IN VIOLATION OF THESE SPECIFICATIONS AND EXECUTIVE ORDER NO. 11246, AS AMENDED.

13. THE CONTRACTOR, IN FULFILLING ITS OBLIGATIONS UNDER THESE SPECIFICATIONS, SHALL IMPLEMENT SPECIFIC AFFIRMATIVE ACTION STEPS, AT LEAST AS EXTENSIVE AS THOSE STANDARDS PRESCRIBED IN PARAGRAPH (7) OF THESE SPECIFICATIONS, SO AS TO ACHIEVE MAXIMUM RESULTS FROM ITS EFFORTS TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY. IF THE CONTRACTOR FAILS TO COMPLY WITH THE REQUIREMENTS OF THE EXECUTIVE ORDER, THE IMPLEMENTING REGULATIONS, OR THESE SPECIFICATIONS, THE DIRECTOR SHALL PROCEED IN ACCORDANCE WITH 41 C.F.R. § 60-4.8.

14. THE CONTRACTOR SHALL DESIGNATE A RESPONSIBLE OFFICIAL TO MONITOR ALL EMPLOYMENT RELATED ACTIVITY TO ENSURE THAT THE COMPANY EEO POLICY IS BEING CARRIED OUT, TO SUBMIT REPORTS RELATING TO THE PROVISIONS HEREOF AS MAY BE REQUIRED BY THE GOVERNMENT AND TO KEEP RECORDS. RECORDS SHALL AT LEAST INCLUDE FOR EACH EMPLOYEE THE NAME, ADDRESS, TELEPHONE NUMBERS, CONSTRUCTION TRADE, UNION AFFILIATION IF ANY, EMPLOYEE IDENTIFICATION NUMBER WHEN ASSIGNED, SOCIAL SECURITY NUMBER, RACE, SEX, STATUS (E.G., MECHANIC, APPRENTICE TRAINEE, HELPER OR LABORER), DATES OF CHANGES IN STATUS, HOURS WORKED PER WEEK IN THE INDICATED TRADE, RATE OF PAY, AND LOCATIONS AT WHICH THE WORK WAS PERFORMED. RECORDS SHALL BE MAINTAINED IN AN EASILY UNDERSTANDABLE AND RETRIEVABLE FORM; HOWEVER, TO THE EXTENT THAT EXISTING RECORDS SATISFY THIS REQUIREMENT, CONTRACTORS SHALL NOT BE REQUIRED TO MAINTAIN SEPARATE RECORDS.

15. NOTHING HEREIN PROVIDED SHALL BE CONSTRUED AS A LIMITATION UPON THE APPLICATION OF OTHER LAWS THAT ESTABLISH DIFFERENT STANDARDS OF COMPLIANCE OR UPON THE APPLICATION OF REQUIREMENTS FOR THE HIRING OF LOCAL OR OTHER AREA RESIDENTS (E.G., THOSE UNDER THE PUBLIC WORKS EMPLOYMENT ACT OF 1977 AND THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM).

#### **EE. VETERANS EMPLOYMENT**

As provided by 49 U.S.C. § 532S(k), to the extent practicable, Contractor agrees that it will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under this contract and that it will not give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## APPENDIX NO. 1

### NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER NO. 11246):

(1) THE OFFEROR'S OR BIDDER'S ATTENTION IS CALLED TO THE "EQUAL OPPORTUNITY CLAUSE" AND THE "STANDARD FEDERAL EQUAL EMPLOYMENT SPECIFICATIONS" SET FORTH HEREIN.

(2) (a) THE GOALS AND THE TIMETABLES FOR MINORITY AND FEMALE PARTICIPATION, EXPRESSED IN PERCENTAGE TERMS FOR THE CONTRACTOR'S AGGREGATE WORK FORCE IN EACH TRADE ON ALL CONSTRUCTION WORK IN THE COVERED AREA, ARE AS FOLLOWS:

---

TIMETABLES GOALS FOR MINORITY  
PARTICIPATION IN EACH TRADE

TRADE 15.3%

GOALS FOR FEMALES  
PARTICIPATION IN EACH

6.9%

---

GOALS FOR EACH YEAR

PARTICIPATION

GOALS FOR EACH YEAR

6.9% FEMALE

15.3% MINORITY

---

(b) THESE GOALS ARE APPLICABLE TO ALL THE CONTRACTOR'S CONSTRUCTION WORK (WHETHER OR NOT IT IS FEDERAL OR FEDERALLY ASSISTED) PERFORMED IN THE COVERED AREA. IF THE CONTRACTOR PERFORMS CONSTRUCTION WORK IN A GEOGRAPHICAL AREA LOCATED OUTSIDE THE COVERED AREA, IT SHALL APPLY THE GOALS ESTABLISHED FOR SUCH GEOGRAPHICAL AREA WHERE THE WORK IS ACTUALLY PERFORMED. WITH REGARD TO THIS SECOND AREA, THE CONTRACTOR ALSO IS SUBJECT TO THE GOALS FOR BOTH ITS FEDERALLY INVOLVED AND NON FEDERALLY INVOLVED CONSTRUCTION.

(c) THE CONTRACTOR'S COMPLIANCE WITH THE EXECUTIVE ORDER AND THE REGULATIONS AT 41 C.F.R. PART 60-4 SHALL BE BASED ON ITS IMPLEMENTATION OF THE EQUAL OPPORTUNITY CLAUSE, SPECIFIC AFFIRMATIVE ACTION OBLIGATIONS REQUIRED BY THE SPECIFICATIONS SET FORTH AT 41 C.F.R. 60-4.3(a), AND ITS EFFORTS TO MEET THE GOALS. THE HOURS OF MINORITY AND FEMALE EMPLOYMENT AND TRAINING MUST BE SUBSTANTIALLY UNIFORM THROUGHOUT THE LENGTH OF THE CONTRACT, AND IN EACH TRADE, AND THE CONTRACTOR SHALL MAKE A GOOD FAITH EFFORT TO EMPLOY MINORITIES AND WOMEN EVENLY ON EACH OF ITS PROJECTS. THE TRANSFER OF MINORITY OR FEMALE EMPLOYEE OR TRAINEES FROM CONTRACTOR TO CONTRACTOR OR FROM PROJECT TO PROJECT FOR THE SOLE PURPOSE OF MEETING THE CONTRACTOR'S GOALS SHALL BE A VIOLATION OF THE CONTRACT, THE EXECUTIVE ORDER, AND THE REGULATIONS IN AT 41 C.F.R. PART 60-4. COMPLIANCE WITH THE GOALS WILL BE MEASURED AGAINST THE TOTAL WORK HOURS PERFORMED.

(3) THE CONTRACTOR SHALL PROVIDE WRITTEN NOTIFICATION TO THE

CONTRACT NO.  
YEAR

SUPPLEMENTARY CONDITIONS  
00800 - 42

MBTA  
REV 12/23

DIRECTOR OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS WITHIN 10 WORKING DAYS OF AWARD OF ANY CONSTRUCTION SUBCONTRACT IN EXCESS OF \$10,000 AT ANY TIER FOR CONSTRUCTION WORK UNDER THE CONTRACT RESULTING FROM THIS SOLICITATION. THE NOTIFICATION SHALL LIST THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE SUBCONTRACTOR; ESTIMATED DOLLAR AMOUNT OF THE SUBCONTRACT; ESTIMATED STARTING AND COMPLETION DATES OF THE SUBCONTRACT; AND THE GEOGRAPHICAL AREA IN WHICH THE SUBCONTRACT IS TO BE PERFORMED.

- (4) AS USED IN THIS NOTICE, AND IN THE CONTRACT RESULTING FROM THIS SOLICITATION, THE "COVERED AREA" IS ***(SEE NOTICE TO BIDDERS)***.

## **APPENDIX NO. 2**

### **THE COMMONWEALTH OF MASSACHUSETTS**

#### **SUPPLEMENTAL EQUAL EMPLOYMENT**

##### **OPPORTUNITY**

##### **ANTI DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM**

- I. FOR PURPOSES OF THIS CONTRACT, "minority" refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. "Commission" refers to the Massachusetts Commission Against Discrimination.
- II. During the performance of this contract, the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:
  1. In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising, recruitment layoff; termination; rates of pay or other forms of compensation, conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).
  2. In connection with the performance of work under this contract, the Contractor, shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.
- III. 1. As part of his obligation of remedial action under the foregoing section, the Contractor shall maintain on this project a not less than 15.3 percent ratio of minority employee man hours to total man hours in each job category, including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work enumerated in Section 44F of Chapter 149 of the Massachusetts General Laws.

2. In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or the Commission.

IV. 1. At the discretion of the Commission there may be established for the life of this contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering this project, herein after called the administering agency, the Commission and such other representatives as may be designated by the Commission in conjunction with the administering agency.

2. The Contractor (or his agent, if any, designated by him the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.
3. The Contractor shall prepare projected manning tables on a quarterly basis. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the Commencement of the period covered, and also when updated, to the Commission and Liaison Committee.
4. Records of employment referral orders, prepared by the Contractor, shall be made available to the Commission and to the Liaison Committee on request.
5. The Contractor shall prepare weekly reports in a form approved by the Commission of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Commission and to the Liaison Committee.

- V. If the Contractor shall use any subcontractor on any work performed under this contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and postbid periods. It shall include notification to the Office of Minority business Assistance (within the Executive Office of Communities and Development) or its designee, when bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.

VI. **Not Used**

- VII. A designee of the Commission and a designee of the Liaison Committee shall each have right of access to the construction site.

VIII. Compliance with Requirements

The Contractor shall comply with the provisions of Executive Order No. 74, as amended by Executive Order No. 116 dated May 1, 1975, and of Chapter 151B as amended, of the Massachusetts General Laws, both of which are herein

incorporated by reference and made a part of this contract.

IX. Non-Discrimination

The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment.

X. Solicitations for Sub-Contracts, and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action.

XI. Bidders Certification Requirement

For Bidders Certification Requirements, please refer to the Form for Bid included in the Proposal Form for this Contract.

XII. Contractor's Certification

The Contractor's certification form must be signed by all successful low bidder(s) prior to award by the contracting agency.

XIII. Compliance - Information, Reports and Sanctions

1. The Contractor will provide all information and reports required by the administering agency or the Commission on instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Commonwealth's supplementary affirmative action contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.
2. Whenever the administering agency, the Commission, or the Liaison Committee believes the General Contractor or any Subcontractor may not be operating in compliance with the terms of this Section, the Commission directly, or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such contractor is operating in compliance with the terms of this Section. If the Commission or its agent finds the General Contractor or any subcontractor not in compliance, it shall make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgement of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission shall make a final report of noncompliance, and recommend to the administering agency the imposition of one or more of the sanctions listed below. If, however, the Commission believes the General Contractor or

any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of noncompliance. Within fourteen days of the receipt of the recommendations of the Commission, the administering agency shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

- (a) The recovery by the administering agency from the General Contractor of 1/100 of 1% of the contract award price or \$1000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the administering agency from the General Contractor, to be assessed by the General Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the subcontract price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;
  - (b) The suspension of any payment or part thereof due under the contract until such time as the General Contractor or any Subcontractor is able to demonstrate his compliance with the terms of the contract;
  - (c) The termination, or cancellation, of the contract, in whole or in part, unless the General Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;
  - (d) The denial to the General Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering agency for a period of up to three years.
3. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that he is in compliance with this Section, he may request the administering agency, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the administering agency, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.
4. Sanctions enumerated under Sections XIII-2 shall not be imposed by the administering agency except after an adjudicatory proceeding, as that term is used M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

#### XIV. Severability

The provisions of this section are severable, and if any of those provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

**A. Contractor's Certification**

A contractor will not be eligible for award of a contract unless such contractor has submitted the following certification, which is deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

---

Contractor

certifies that:

1. it intends to use the following listed construction trades in the work under the contract  
\_\_\_\_\_ and \_\_\_\_\_
2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
3. will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this contract the subcontractor certification required by these bid conditions.

---

(Signature of authorized representative of contractor)



**B. Subcontractors' Certification**

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTORS' CERTIFICATION

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Subcontractor

certifies that:

1. it intends to use the following listed construction trades in the work under the subcontract and  

---
2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
3. will obtain from each of the subcontractors prior to the award of any subcontract under this subcontract the subcontractor certification required by these bid conditions.

---

(Signature of authorized representative of subcontractor)

In order to ensure that the said subcontractors certification becomes a part of all subcontracts under the prime contract, no subcontract shall be executed until an authorized representative of the state agency (or agencies) administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.

**MASSACHUSETTS BAY  
TRANSPORTATION  
AUTHORITY**

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**DISADVANTAGED BUSINESS  
ENTERPRISE (DBE)**

**PARTICIPATION**

**PROVISIONS April**

**2022**



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## **I. POLICY STATEMENT (26.1, 26.23)**

The Massachusetts Bay Transportation Authority, hereinafter referred to as "the Authority" or "the MBTA," has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Authority has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, the Authority has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in contracts funded wholly or in part by USDOT funds. Further, in keeping with the spirit of growth and development, raising the bar to fulfill business needs and ensuring quality, the Authority will also provide networking opportunities, technical support, guidance and training to DBEs and contractors to support quality business partnerships.

It is the policy of the Authority to do the following:

1. Ensure non-discrimination in the award and administration of USDOT-assisted contracts.
2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate in the DBE Program.
5. Help remove barriers to the participation of DBEs in USDOT-assisted contracts.
6. Assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

In administering the DBE Program, the Authority will not do the following:

1. Exclude any person from participation in the award and performance of any contract on the basis of age, race, color, religion, sexual orientation, disability or national origin.
2. Directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of 49 CFR Part 26.
3. Use race- or gender-conscious participation set-asides on any USDOT-assisted contracts; but, race- or gender- neutral set-asides can be used

as part of the MBTA fostering a Small Business Program.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Authority in its financial assistance agreements with USDOT. The Assistant Secretary of the Office of Diversity and Civil Rights, Julian T. Tynes, has been designated as the DBE Liaison Officer (DBELO), and has unimpeded and direct access to the General Manager of the MBTA. In that capacity, the Assistant Secretary is responsible for implementing all aspects of the DBE Program. The DBELO shall act in an administrative capacity in implementing the DBE Program throughout the Authority.

## **II. DEFINITIONS**

Terms and definitions applicable to the USDOT DBE Program and these Provisions may be found at 49 CFR § 26.5 and related appendices and guidance pages.

## **III. CONTRACTOR ASSURANCES**

The contractor, subrecipient or any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract or such other remedy as the Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Suspension and/or Termination of the contract, in whole or in part;
3. Making payment directly to the DBE/Subcontractor; and/or
4. Other sanctions as defined below in Section VIII.

## **IV. REQUIRED SUBCONTRACT PROVISIONS**

The contractor shall include the provisions of Section III - Contractor Assurances above in every subcontract, making those provisions binding on each subcontractor. The contract also shall include a copy of these Provisions, in their entirety, in every subcontract with a DBE firm which is, or may be, submitted for credit toward the contract's DBE participation goal. All subcontracts or agreements with DBEs to supply labor or materials, including but not limited to lower tier subcontracts, must be performed in accordance with these Provisions and 49 CFR Part 26.

## **V. DBE PARTICIPATION**

- a) Affirmative Action Obligation

Contractor shall take affirmative action to seek out and consider DBEs as subcontractors and/or suppliers of materials and services for this contract to achieve the stated DBE Participation Goal.

b) DBE Participation Goal

The Authority has established the following goal(s) for participation on this contract by DBEs. The applicable goal remains in effect throughout the life of the contract regardless of whether pre-identified DBE subcontractors remain on the Project or under contract:

1. Design-Bid-Build Projects: DBEs will perform portions of the Work for prices totaling not less than the percentage of the Contract Price identified in the bidding documents.
2. Design-Build Projects: DBE Design Participation Goal N/A% and DBE Construction Participation Goal N/A%.
3. Supplies and Services Contracts:
  - a. Supplies: DBE Participation Goal N/A%.
  - b. Services: DBE Participation Goal N/A%.
  - c. Other: DBE Participation Goal N/A%.

c) Eligibility of DBEs

Only firms that have been certified by the Massachusetts Unified Certification Program ("MassUCP") and confirmed by the Authority as eligible in accordance with 49 CFR Part 26 to participate as DBEs on federally aided Authority contracts may be used on this contract for credit toward the DBE participation goal.

a. Massachusetts DBE Directory

The Authority makes available to all bidders/proposers the most current Massachusetts Disadvantaged Business Enterprise (DBE) Directory. This directory is made available for contractors' convenience and is informational only. The Directory lists those firms that have been certified as eligible in accordance with the criteria of 49 CFR Part 26 to participate as DBEs on federally aided Authority contracts. The Directory also lists the kinds of work each firm is certified to perform but does not constitute an endorsement of the quality of performance of any business and does not represent the Authority's subcontractor approval.

Contractors are encouraged to make use of the DBE Directory maintained by Massachusetts Supplier Diversity Office ("SDO") on the Internet. This listing is updated daily and may be accessed at the SDO website at: <https://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDi>

rectory.aspx

b. DBE Certification

In order to be counted on a USDOT-assisted contract, a DBE must be certified in accordance with 49 CFR 26, Subparts C and D (Sections 26.51-26.55 and 26.61- 26.73). A firm must apply to MassUCP for DBE certification to participate on federally aided Authority contracts. An applicant for DBE certification must identify the area(s) of work it seeks to perform on USDOT-assisted projects.

c. DBE Joint Venture Approval

To obtain recognition as an approved DBE joint venture, the parties to the joint venture must provide to the Authority's Capital Program Support Department or Selection Committee as applicable - at least ten (10) business days before the bid/proposal opening date - a DBE/Non-DBE Joint Venture Affidavit in the form attached hereto (Form C), and including, but not limited to the following:

- i. A copy of the joint venture agreement;
- ii. A description of the distinct, clearly defined portion of the contract work that the DBE will perform with its own forces; and,
- iii. All such additional information as may be requested by the Authority for the purpose of determining whether the DBE joint venture is eligible.

The DBE joint venture must be approved by both (a) the Authority's Office of Diversity and Civil Rights and (b) the Authority's Capital Program Support Department or Selection Committee as applicable.

d) Counting DBE Participation Towards DBE Participation Goals

In order for DBE participation to count toward the DBE participation goal, the DBE(s) must have served a commercially useful function in the performance of the contract and must have been paid in full for acceptable performance. The Authority will count DBE participation toward overall and contract goals as provided in 49 C.F.R. § 26.55.

**VI. REQUIREMENTS AND PROCEDURES BEFORE CONTRACT AWARD**



a) Bidders List

Pursuant to 49 CFR § 26.11(c), the Authority must collect certain information from all bidders/proposers to create a bidders list. The Authority will survey each individual firm for this information directly. Failure to comply with a written request for this information within fifteen (15) business days may result in the suspension of bidding privileges or other such sanctions, as provided for in these Provisions, until the information is received.

b) Pre-Bid/Proposal Conference

At the pre-bid/proposal conference which may be held with respect to this contract, the Authority shall be available to review with prospective bidders/proposers the steps they must take to comply with these Provisions and to assist prospective bidders/proposers with respect thereto. No action or failure to act of the Authority at the pre-bid/proposal conference shall in any way limit or otherwise affect the terms of these Provisions, or any portion thereof; however, bidders/proposers shall be deemed to have notice of information made available with respect to these Provisions at the pre-bid/proposal conference. The Authority will be available to the prospective bidders/proposers for review of and assistance with the procedures for compliance with these Provisions for contracts that do not require a pre-bid/proposal conference.

c) Bid/Proposal Submission

1. Each bidder/proposer, as part of its bid/proposal submission, shall submit the following:
  - a. A completed **Schedule of Participation by Disadvantaged Business Enterprises**, listing those DBEs with which the bidder/proposer intends to contract.
    - i. The bidder/proposer shall list only firms which have the capacity to perform, manage and supervise the work proposed in accordance with the requirements of 49 CFR Part 26.
    - ii. The listing of a DBE by a bidder/proposer on its Schedule shall constitute a representation by the bidder/proposer that, if it is awarded the contract, it will enter into a subcontract with such DBE for the scope of the work and at a price that is not less than that set forth in its bid/proposal submission, subject to the terms of these Provisions and the contract.

- b. A completed and signed original **Letter of Intent** for each DBE listed in the Schedule, identifying the work the DBE will perform by NAICS Code and by specific description.
  - c. The most recent certification letter from MassUCP for each DBE listed in the Schedule of Participation by Disadvantaged Business Enterprises.
- 2. If the Authority determines at the time of bid/proposal opening that the apparent prevailing bidder/proposer has failed to include in its bid/proposal package all of the required information, the bidder/proposer will have the lesser of three (3) business days or five (5) calendar days from the date of notification of this failure to present the missing certification letter to the Authority.
- 3. In the event the scope of work listed on the Schedule is not sufficient to fulfill the stated goal, the bidder/proposer shall submit a statement of good faith efforts of the reasons why it believes it is in compliance with these Provisions.
  - a. A statement of good faith efforts must include the types and extent of documentation identified in Appendix A to 49 CFR Part 26.

When a non-DBE subcontractor was selected over a DBE for work on the contract, the bidder must provide copies of each DBE and non-DBE subcontractor quote submitted to the bidder/proposer.

d) Evaluation of Good Faith Efforts

- a. The apparent prevailing bidder/proposer's attainment of the DBE participation goal or a satisfactory demonstration of good faith efforts is a prerequisite for award of the contract. The Authority may reject as non-responsive any bid/proposal which it determines fails to comply with these Provisions.
- b. The Authority may request additional information from bidders/proposers concerning their good faith efforts. All information requested by the Authority for the purpose of evaluating a bidder/proposer's efforts to achieve the DBE participation goal must be provided within three (3) calendar days.
- c. Actions which constitute evidence of good faith efforts to meet a DBE participation goal are outlined in 49 CFR Part 26, Appendix A.
- d. In a negotiated procurement, including a design-build procurement, good faith efforts will be determined consistent with the provisions of 49 CFR § 26.53(b)(3)(ii).

- e. If the Authority finds that the bidder/proposer has not demonstrated good faith efforts to comply with these requirements, it shall propose that the bidder/proposer be declared ineligible for award. In that case, the bidder/proposer may request administrative reconsideration in accordance with 49 CFR § 26.53(d). Such requests must be sent in writing within five (5) calendar days of receiving notice of proposed ineligibility to: The Office of the General Counsel, Massachusetts Department of Transportation, 10 Park Plaza, Boston, MA, 02116.
- f. If, after administrative reconsideration, the Authority finds that the bidder/proposer has not shown that sufficient good faith efforts were made to comply with the requirements of these Provisions, it shall reject the bidder/proposer's proposal and may retain the proposal guaranty.

e) Failure of Bidder/Proposer to Participate

Failure of any bidder/proposer to participate in any proceeding applicable with respect to its bid, after written request by the Authority may result in a determination that its bid/proposal is non-responsive.

f) Amendment of Schedule of Participation by Disadvantaged Business Enterprises

A bidder/proposer may amend its Schedule of Participation by Disadvantaged Business Enterprises only when authorized to do so by the Authority and only in accordance with the requirements of 49 CFR Part 26 and Section VII of these Provisions.

## **VII. REQUIREMENTS AND PROCEDURES AFTER CONTRACT AWARD**

a) General Provisions for Proposal and Approval of Subcontractors

1. The Authority retains the right to approve or disapprove of any or all subcontractors.
2. If, pursuant to the subcontractor approval process, the Authority finds that a DBE subcontractor does not have sufficient experience or resources to perform, manage and supervise work of the kind proposed in accordance with the requirements of 49 CFR Part 26, approval of the DBE subcontractor may be denied. In the event of such denial, the contractor shall proceed in accordance with the requirements of this section and 49 CFR Part 26.
3. After selection of the contractor and award of the contract, and before the commencement of any work by a DBE or Non-DBE subcontractor, the contractor must provide a copy of an executed agreement for each DBE and non-DBE subcontractor to Capital

Program Support and the Government Compliance Unit in the  
Office of Diversity and Civil Rights.

b) Compliance with Schedule of Participation by Disadvantaged Business Enterprises

1. The contractor shall utilize the specific DBEs listed in its approved Schedule of Participation of Disadvantaged Business Enterprises to perform the work and supply the materials for which each is listed unless the contractor obtains the written consent of the Authority's Office of Diversity and Civil Rights ("ODCR") as provided in these Provisions. Unless such consent is provided under these Provisions, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
2. The contractor's compliance with the DBE participation goal shall be determined by reference to the established percentage of the total contract price; provided, however, that no decrease in the dollar amount of a contractor's commitment to any DBE shall be allowed without the approval of ODCR.
3. If the contract price is increased or the scope of work is changed, the contractor may be required to submit a revised Schedule of Participation of Disadvantaged Business Enterprises in accordance with these Provisions.
4. In the event of the decertification of a DBE scheduled to participate on the contract for credit toward the DBE participation goal, the provisions of 49 CFR § 26.87 shall apply.
5. The contractor shall notify the Authority immediately of any facts that come to its attention indicating that it may or will be unable to comply with any aspect of its DBE obligation under this contract.
6. Any notice required by these Provisions shall be given in writing to: (1) the Resident Engineer; (2) designated Compliance Officer; and (3) the Assistant Director of Federal Programs, MBTA Office of Diversity and Civil Rights, 10 Park Plaza, Suite 3800, 3rd Floor, East Wing, Boston, MA, 02116.

c) Request for Revised Schedule of Participation of Disadvantaged Business Enterprises

If, for reasons beyond its control, the contractor cannot comply with its DBE participation commitment in accordance with the Schedule of Participation of Disadvantaged Business Enterprises, the contractor shall submit to the Authority the reasons for its inability to comply with its obligations and shall submit, and request approval for, a revised Schedule of Participation of Disadvantaged Business Enterprises. If approved by ODCR, the revised Schedule shall govern the contractor's

performance in meeting its obligations under these Provisions.

d) Termination of DBE by Contractor for Cause or Convenience

1. A contractor shall not terminate a DBE subcontractor or an approved substitute DBE firm for Cause or Convenience without the prior written consent of ODCR. This includes, but is not limited to, instances in which a contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
2. With respect to a Termination for Cause, ODCR may provide such written consent only if it finds, for reasons stated in its concurrence document, that the contractor has good cause to terminate the DBE firm.
3. For purposes of this paragraph, good cause includes the circumstances identified in 49 CFR § 26.53.

Before transmitting to ODCR a request to terminate and/or substitute a DBE subcontractor, the contractor must give notice in writing to the DBE subcontractor, with a copy to ODCR of its intent to request to terminate and/or substitute, and the reason for the request.

4. The contractor must give the DBE five (5) business days to respond to the contractor's notice. The DBE must advise the Authority and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Authority should not approve the contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Authority may provide a response period shorter than five (5) business days.
5. In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms.

e) Substitution of DBEs

When a DBE subcontractor is terminated as provided in this section or fails to complete its work on the contract for any reason, the contractor must make good faith efforts, as outlined in Appendix A to 49 CFR § 26, to find another DBE Subcontractor to substitute for the original DBE as detailed in 49 CFR §53.

f) Prompt Payment and Release of Retainage

The contractor must promptly pay each subcontractor under this contract for satisfactory performance of its contract within ten (10) business days from the receipt of each payment the contractor receives from the Authority. The contractor further agrees to make payment in full, including retainage, to each Subcontractor no later than ten (10) business days after the Subcontractor has satisfactorily completed all of the work required under its

subcontract. Failure to comply with this requirement may result in the withholding of payment to the contractor until such time as all payments due under these Provisions have been received by the subcontractor(s) and/or other sanctions provided for in this Appendix including but not limited to referral to the Prequalification Committee for action, which may affect the contractor's prequalification status.

If the prime contractor determines the work of the subcontractor to be unsatisfactory, it must notify the MBTA's Construction Project Manager, Contract Services Department, and DBE Coordinator/ Contract Compliance Office, where applicable. Any delay or postponement of payment among the parties may take place only for good cause and with prior written approval from the MBTA.

The contractor must include in its subcontracts language assuring that the contractor and subcontractors will use appropriate dispute resolution mechanisms to resolve payment disputes.

The Authority reserves the right to not make payment to the contractor for work performed by subcontractors unless and until the contractor ensures that the subcontractors are promptly paid for the work they have performed.

#### g) Joint Checks

##### 1. Policy

The Authority recognizes that the use of Joint Checks may be a business practice required by material suppliers and vendors in the construction industry. A Joint Check is a two-party check issued by the contractor to a DBE subcontractor and a third party such as a Regular Dealer of material or supplies. The contractor issues the check as payer to the DBE and the third party jointly as payees to guarantee payment to the third party for materials or supplies obtained or to be used by the DBE. FTA has established criteria to ensure that DBEs are in fact performing a commercially useful function while using a Joint Check arrangement. Contractors and DBEs must meet and conform to these conditions and criteria governing the use of Joint Checks.

In the event that a contractor or DBE subcontractor desires to use a Joint Check, the Authority will require prior notice and will closely monitor the arrangement for compliance with FTA regulations and guidance. The Authority may allow a Joint Check arrangement and give credit to a contractor for use of the DBE where one or more of the following conditions exist:

- i. The use of a Joint Check is in fact required by this type of vendor or supplier as a standard industry practice that applies to all contractors and subcontractors (DBEs and non- DBEs); or is required by a specific vendor or supplier;
- ii. Payment for supplies or materials would be delayed for an unreasonably extended period without the Joint Check

arrangement;

- iii. The DBE (or any of its sub-subcontractors) has a pattern or history of not paying a vendor or supplier within a reasonable time or has not established enough of a credit history with the supplier or vendor; and/or
- iv. The presence of severe adverse economic conditions, where credit resources may be limited and such practices may be necessary or required to effect timely payments.

The Authority also may consider other factors, including without limitation:

- v. Whether there is a requirement by the contractor that a DBE should use a specific vendor or supplier to meet their subcontractor specifications;
- vi. Whether there is a requirement that a DBE use the contractor's negotiated price;
- vii. The independence of the DBE;
- viii. Whether approval has been sought prior to use of a Joint Check arrangement;
- ix. Whether any approved Joint Check arrangement has exceeded a reasonable period of use;
- x. The operation of the Joint Check arrangement; and
- xi. Whether the DBE has made an effort to establish alternate arrangements for following periods (i.e., the DBE must show it can, or has, or why it has not, established or increased a credit line with the vendor or supplier).

Even with the use of a Joint Check, both the contractor and DBE remain responsible for compliance with all other elements under 49 CFR § 26.55 (c) (1) and must still be able to prove that a commercially useful function is being performed for the contractor.

## 2. Procedure

The following procedure will apply if the Authority allows the use of a Joint Check arrangement.

- i. The contractor will submit requests for approval to the Authority, using the Authority's approved DBE Joint Check Arrangement Approval Form (Document 030), attached as Form D, and any other relevant documents. Requests that are not initiated during the bid/proposal process should be made in writing and comply with the procedure;
- ii. The Authority's Office of Diversity and Civil Rights will review each request and render a decision as part of the approval process for DBE Schedules and Letters of Intent;
- iii. Review and Approval will be project specific and relevant documents will be made part of the project contract file;
- iv. Payments should be made in the name of both the DBE and the vendor or supplier; Payments should be issued and

signed by the contractor as only the guarantor for prompt payment of purchases to the vendor or supplier. The payment to the vendor or supplier should be handled by the DBE (i.e., if possible, funds or the Joint Check should be processed by the DBE and sent by the DBE to the vendor or supplier);

- v. The Authority may request copies of cancelled checks (front and back) and transmittal information to verify any payments made to the DBE and vendor or supplier; and
- vi. The Authority may request other information and documents, and may ask questions of the contractor, subcontractor and vendor or supplier prior to, during, and after the project performance to ascertain whether the subcontractor is performing a commercially useful function and all parties are complying with DBE Program policies and procedures as part of the subcontractor approval process.

## **VIII. SANCTIONS**

If the contractor does not comply with the terms of these Provisions and cannot demonstrate to the satisfaction of the Authority that good faith efforts were made to achieve such compliance, the Authority may, in addition to any other remedy provided for in the contract, and notwithstanding any other provision in the contract, use any of the sanctions available under federal law, including but not limited to 49 CFR §26, Massachusetts law or this contract, including by not limited to:

- a) Withholding monthly progress payments;
- b) Make payments directly to the DBE/Subcontractor'
- c) Disqualify the contractor from future bidding as non-responsible;
- d) Retaining, in connection with final acceptance and final payment processing, an amount determined by multiplying the total contract amount by the percentage in Section II - DBE Participation, less the amount paid to approved DBE(s) for work performed under the contract in accordance with the provisions of 49 CFR Part 26;
- e) Suspending, terminating or canceling this contract, in whole or in part, and call upon the contractor's surety to perform all terms and conditions in the contract;
- f) Referring the contractor for debarment proceedings pursuant to M.G.L. c. 29 § 29F and, as applicable, 2 CFR Parts 180, 215 and 1,200;
- g) Referring the matter to the Massachusetts Attorney General for review and prosecution, if appropriate, of any false claim or pursuant to M.G.L.



- c. 12, §§ 5A to 5O (the Massachusetts False Claim Act);
- h) Referring the matter to the USDOT's Office of the Inspector General, the United States Department of Justice or other agencies for prosecution under Title 18, U.S.C. § 1001, 49 CFR Parts 29 and 31, and other applicable laws and regulations; and
- i) Assessing other sanctions consistent with 49 CFR Part 26.

**IX. FURTHER INFORMATION; ENFORCEMENT, COOPERATION, REPORTING AND CONFIDENTIALITY**

- A. Any proposed DBE, bidder/proposer, or contractor shall provide such information as is necessary in the judgment of the Authority to ascertain its compliance with the terms of these Provisions.
- B. Any proposed DBE, bidder/proposer, or contractor must comply with 49 CFR § 26.107, which outlines the enforcement actions that apply to firms.
- C. The Contractor must utilize EBO which provides the Contractor an easy-to-use, web-based service for reporting payments rendered to all Subcontractors. Until such time as the EBO System is fully implemented, the Prime Contractor is required to complete and submit MBTA Form E (Monthly Report of Payments Made to DBEs) and Form F (Monthly Report of Payments Made to All Subcontractors/Vendors). The Form E and Form F shall be submitted by the seventh (7<sup>th</sup>) day of each month for the previous month. The Contractor is also required to submit copy of both forms into the E-Builder System.
- D. The Contractor will receive an alert for every payment made by the Authority and must report all Subcontractor payments in EBO upon implementation of EBO or any other automated compliance system utilized by MBTA no later than seven (7) calendar days after paying the Subcontractor(s). Failure to follow these directions may delay the next payment to the Contractor.
- E. The Contractor is required to respond, within three (3) days of the request, to any MBTA inquiries/desk audits performed by ODCR or its MBTA representative. Requests for information will include, but are not limited to, subcontractor invoices and proof of payment (i.e., cancelled check or electronic fund transfer ("EFT") statement).
- F. Any proposed DBE, bidder/proposer, or contractor must comply with 49 CFR § 26.109, which outlines the rules governing information, confidentiality, cooperation, and intimidation or retaliation.

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# Form A

## DOCUMENT 020

### SCHEDULE OF PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBES)

CONTRACTOR / CONSULTANT: \_\_\_\_\_

DATE OF BID/PROPOSAL OPENING: \_\_\_\_\_

CONTRACT NO.: PROJECT LOCATION: \_\_\_\_\_

Name, Address, and Phone Number(s) of DBE	Name of Activity	(a) ) DBE Contractor Activity Amount	(b) ) NAICS CODE(S)	(c)  Total amount eligible for credit under rules in Supplementary Conditions, Appendix 3
Total Bid Amount	TOTALS :	\$		\$
\$	DBE Percentage of Total Bid:	%		%

Is the MBTA Joint Check Approval (Document 030) being submitted for any of the above? ☐

Yes ☐ No

☐ Not Known at This Time

Will any of the contractors listed above be using a third party (i.e. manufacturer) to deliver materials or perform any portion

of work by a third party? ☐ Yes ☐ No

**CERTIFICATION:** I HEREBY DECLARE, TO THE BEST OF MY KNOWLEDGE, THAT I HAVE READ APPENDIX 3 - DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PROVISIONS. BOTH THIS SCHEDULE AND THE RELEVANT AND ACCOMPANYING LETTER(S) OF INTENT ARE IN FULL COMPLIANCE WITH THE PROVISIONS OF, AND IN ACCORDANCE WITH, TITLE 49 CODE OF FEDERAL REGULATIONS, PART 26 (49 CFR Part 26).

SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

NAME AND TITLE (*PRINT*): \_\_\_\_\_

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EMAIL ADDRESS: \_\_\_\_\_ TEL NO.: \_\_\_\_\_

# Form B

DOCUMENT No. 010

## DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION LETTER OF INTENT

(To be completed by the DBE - Page 1 of 2)

TO: \_\_\_\_\_  
(Bidder/Proposer)

FROM: \_\_\_\_\_(DBE

Firm) RE: CONTRACT NO.: \_\_\_\_\_ PROJECT NAME: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

DATE OF BID/PROPOSAL OPENING OR DUE DATE: \_\_\_\_\_

**I, \_\_\_\_\_, authorized signatory of the above-referenced DBE firm  
hereby declare:**

*Print Name*

1. My company is currently certified as a Disadvantaged Business Enterprise (DBE) by the Massachusetts Unified Certification Program ("MassUCP"), as a (check all that apply):
- ( ) CONTRACTOR ( ) REGULAR DEALER ( ) BROKER  
( ) MANUFACTURER ( ) TRUCKING OPERATIONS ( ) PROFESSIONAL SERVICES

[Additional guidance is available at Title 49, Code of Federal Regulations, Part 26.55  
(49 CFR Part 26.55)]

2. My firm has the ability to manage, supervise and perform the activity described on page 2 of this Letter of Intent. If you are awarded the contract, my company intends to enter into a contract with your firm to perform the items of work or other activity described on the following sheet for the prices indicated.
3. There have been no changes affecting the ownership, control or independence of my company since my last certification review on\_\_\_\_, 20\_\_\_\_. If any such change is planned or occurs prior to my company's completion of this proposed work, I will give prior written notification to your firm and to the Massachusetts Bay Transportation Authority (MBTA) Office of Diversity and Civil Rights and MassUCP.
4. I have read the MBTA proposal for the Project, and acknowledge that my company will comply with that document and the requirements of 49 CFR Part 26.
5. For the purpose of obtaining subcontractor approval from the MBTA, my firm will provide to you:

**A. The following construction work:**

- (i) a complete list of contact information for proposed Superintendent, i.e., address, phone number and e-mail address, and;
- (ii) a list of projects completed in the last 10 years. I shall also include, for each project: the name and telephone number of a contact person for the contracting authority, person, or organization; project title/location (City/State), dollar value of the work; a description of the work; and the date project completed.

**B. The following professional services work:**

- (i) resume, stating the qualifications and experience of person responsible for project oversight and contact information, i.e., address, phone number and

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- e-mail address.
  - (ii) proposed team and organization,
  - (iii) resumes of key personnel;
  - (iv) example projects
- C.. ***The following services, materials or supplies:***
- (i) a written agreement and invoices for the materials or supplies, and any other documents evidencing the terms of providing such items to be sent to the Office of Diversity and Civil Rights Government Compliance Unit designee;
  - (ii) information concerning brokers fees and commissions for providing services or materials.

Date\_\_\_\_\_

\_\_\_\_\_  
*DBE Company Authorized Signature*

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DISADVANTAGED BUSINESS ENTERPRISES (DBE)  
 PARTICIPATION LETTER OF INTENT  
 (To be completed by the DBE - Page 2 of 2)

DATE OF BID / PROPOSAL OPENING OR DUE DATE: \_\_\_\_\_

CONTRACT NUMBER: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

CONTRACTOR / CONSULTANT: \_\_\_\_\_

DBE COMPANY NAME: \_\_\_\_\_

<u>Item number</u> if applicable	<u>NAICS</u> <u>Code</u>	<u>Description of Activity</u> with notations such as Services, or Brokerage, Labor Only, Material Only, or Complete	<u>Quantity</u>	<u>Unit Price</u>	<u>Amount</u>
TOTAL AMOUNT:					

*Please give full explanations, attach additional sheets if necessary.*

I HEREBY VERIFY THAT \_\_\_\_\_ WILL SOLELY  
 (DBE company name)

PERFORM THE WORK, OR PROVIDE THE SERVICES OR MATERIALS, AS

DESCRIBED ABOVE. DBE AUTHORIZED SIGNATURE: \_\_\_\_\_

NAME AND TITLE (PRINT): \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

**Form C**

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**DOCUMENT No. 031**  
**JOINT VENTURE AFFIDAVIT**  
*(All Firms)*

- All Information Requested By This Schedule Must Be Answered. Additional Sheets May Be Attached.
- If, there is any change in the information submitted, the Joint Venture parties must inform the MBTA Capital Delivery Contract Administration Department, Attn: Senior Manager Construction Procurement (and, if one of the companies is a DBE, the Assistant Director of Government Compliance, Office of Civil Rights) *prior* to such change, in writing, either directly or through the Contractor / Consultant if the Joint Venture is a subcontractor.
- If the Joint Venture Entity will be the bidder on a Contract, it must bid and submit all required documents (insurance, worker's compensation, bonds, etc.) in the name of the Joint Venture Entity.

**I. Name of Joint Venture:** \_\_\_\_\_

Type of Entity if applicable (Corp., LLC): \_\_\_\_\_ Filing State \_\_\_\_\_ Address of  
Joint Venture: \_\_\_\_\_

Phone No(s) for JV Entity: \_\_\_\_\_ E-mail: \_\_\_\_\_

Contact Person(s) \_\_\_\_\_ Tax ID/EIN \_\_\_\_\_

Vendor Code: \_\_\_\_\_

**II. Identify each firm or party to the Joint Venture:**

\_\_\_\_\_ Name \_\_\_\_\_ of \_\_\_\_\_ Firm: \_\_\_\_\_

\_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_ Contact

person(s) \_\_\_\_\_ Name of

Firm: \_\_\_\_\_

\_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

Contact Person(s) \_\_\_\_\_

**III. Describe the role(s) of the each party to the Joint Venture:**

\_\_\_\_\_  
\_\_\_\_\_

- IV. Attach a copy of the Joint Venture Agreement.** The proposed Joint Venture Agreement should include specific details including, but not limited to: (1) the contributions of capital and equipment; (2) work items to be performed by each company's forces, (3) work items to be performed under the supervision of any DBE Venturer; (4) the commitment of management, supervisory and operative



personnel employed by the DBE to be dedicated to the performance of the Project; and (5) warranty, guaranty, and indemnification clauses. **Attach any applicable Corporate or LLC Votes, Authorizations, etc.**

**V. Ownership of the Joint Venture:**

A. What is the percentage(s) of each company's ownership in the Joint Venture?

ownership percentage(s): \_\_\_\_\_

ownership percentage(s): \_\_\_\_\_

B. Specify percentages for each of the following (provide narrative descriptions and other detail as applicable):

1. Sharing of profit and loss: \_\_\_\_\_

2. Capital contributions:

(a) Dollar amounts of initial contribution: \_\_\_\_\_

(b) Dollar amounts of anticipated on-going contributions: \_\_\_\_\_

(c) Contributions of equipment (specify types, quality and quantities of equipment to be provided by each firm): \_\_\_\_\_

4. Other applicable ownership interests, including ownership options or other agreements, which restrict or limit ownership and/or control:

5. Provide copies of all other written agreements between firms concerning bidding and operation of this Project or projects or contracts.

6. Identify all current contracts and contracts completed during the past two (2) years by either of the Joint Venture partners to this Joint Venture:

**VI. Control of and Participation in the Joint Venture.** Identify by name and firm those individuals who are, or will be, responsible for and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements.):

A. Joint Venture check signing:

\_\_\_\_\_

B. Authority to enter Contracts on behalf of the Joint Venture:

\_\_\_\_\_

C. Signing, co-signing and/or collateralizing loans:

\_\_\_\_\_

Acquisition of lines of credit:

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D. Acquisition and indemnification of payment and performance bonds:

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E. Negotiating and signing labor agreements:

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F. Management of contract performance. (*Identify by name and firm only*):

1. Supervision of field operations: \_\_\_\_\_
2. Major purchases: \_\_\_\_\_
3. Estimating: \_\_\_\_\_
4. Engineering: \_\_\_\_\_

**VII. Financial Controls of Joint Venture:**

A. Which firm and/or individual will be responsible for keeping the books of account?

---

---

B. Identify the "Managing Partner," if any, and describe the means and measure of their compensation:

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C. What authority does each firm have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this Contract or the work of this Project?

---

**VIII. Personnel of Joint Venture:** State the approximate number of personnel (by trade) needed to perform the Joint Venture's work under this Contract. Indicate whether they will be employees of the majority firm, DBE firm, or the Joint Venture.

	Firm 1 (number)	Firm 2 (number)	Joint Venture (number)
Trade			
Professional			
Administrative/ Clerical			
Unskilled Labor			

Will any personnel proposed for this Project be employees of the Joint Venture?:

If so, who: \_\_\_\_\_

A. Are any proposed Joint Venture employees currently employed by either firm?

Employed by Firm 1: \_\_\_\_\_ Employed by firm 2 \_\_\_\_\_

B. Identify by name and firm the individual who will be responsible for Joint Venture hiring: \_\_\_\_\_

\_\_\_\_\_

**IX. Additional Information.** Please state any material facts and additional information pertinent to the control and structure of this Joint Venture.

\_\_\_\_\_

\_\_\_\_\_

**X. AFFIDAVIT OF JOINT VENTURE PARTIES.** The undersigned affirm that the foregoing statements and attached documents are correct and include all material information necessary to identify and explain the terms and operations of our Joint Venture and the intended participation of each firm in the undertaking. Further, the undersigned covenant and agree to provide to the MBTA current, complete and accurate information regarding actual Joint Venture work, payments, and any proposed changes to any provisions of the Joint Venture, or the nature, character of each party to the Joint Venture. We understand that any material misrepresentation will be grounds for terminating any Contract awarded and for initiating action under Federal or State laws concerning false statements.

Firm 1

Firm 2

\_\_\_\_\_  
Signature  
Duly  
Authorized

\_\_\_\_\_  
Signature  
Duly  
Authoriz  
ed

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

Date

Date

**Form D**

DOCUMENT 030

**DBE JOINT CHECK ARRANGEMENT APPROVAL FORM**

*(to be submitted by Contractor / Consultant)*

**Contract No.:**\_\_\_\_\_ **Project No.** \_\_\_\_\_

**Location:**\_\_\_\_\_ **Bid Opening Date:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

We have received the attached request for the use of a joint check arrangement from \_\_\_\_\_, a DBE on the above- referenced Contract and \_\_\_\_\_, a Material Supplier/Vendor for the subject Contract. The DBE has complied with the requirements of Joint Venture Affidavit Document 029. In particular, the DBE has:

- a written agreement with the material supplier/vendor;
- applied for credit with the subject material supplier and has supplied the vendor's response;
- shown that it will place all orders to the subject material supplier/vendor;
- made and retains all decision-making responsibilities concerning the materials; and
- provided a Joint Check Agreement that is acceptable to the MBTA;

As the Contractor / Consultant for the Project, we agree to issue joint checks (made payable to the Material Supplier/Vendor and the DBE) for payment of sums due pursuant to invoices from the Supplier/Vendor and DBE.

**Contractor / Consultant:**

Company Name

Signature  
Duly Authorized

Printed Name

Date

Title

**SubContractor:**

Company Name

Signature  
Duly Authorized

Printed Name

Date

Title



**PAYROLL**



**Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.**

Rev. Dec. 2008

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS	OMB No.: 1215-0149 Expires: 12/31/2011
PAYROLL NO	FOR WEEK ENDING	PROJECT AND LOCATION	
			PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
			HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction projects to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction projects to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine if employees have received locally required wages and fringe benefits.

## Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, gathering existing data sources, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have many comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room 35502, 200 Constitution Avenue, N.W.

(over)

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in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

REMARKS:

NAME AND TITLE	SIGNATURE
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THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 18 OF THE UNITED STATES CODE.